



आरत का राजपत्र

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सं. 20]

नई दिल्ली, मई 10—मई 16, 2015, शनिवार/वैशाख 20—वैशाख 26, 1937

No. 20]

NEW DELHI, MAY 10—MAY 16, 2015, SATURDAY/VAISAKHA 20—VAISAKHA 26, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके।
 Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं

Statutory Orders and Notifications Issued by the Ministries of the Government of India

(Other than the Ministry of Defence)

मानव संसाधन विकास मंत्रालय

(उच्चतर शिक्षा विभाग)

(राजभाषा यूनिट)

नई दिल्ली, 5 मई, 2015

का.आ. 986.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम 4 के अनुसरण में, मानव संसाधन विकास मंत्रालय (उच्चतर शिक्षा विभाग) के अंतर्गत दक्षिण बिहार केंद्रीय विश्वविद्यालय, हाउस सं. 16/13, वार्ड सं. 9ए, न्यू एरिया, 38, बीसर, गया-823001 (बिहार) को ऐसे कार्यालय के रूप में, जिसके 80 प्रतिशत से अधिक कर्मचारी—वृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[सं. 11011-2/2015-राभा०]

सुखबीर सिंह संधु, संयुक्त सचिव

MINISTRY OF HUMAN RESOURCE DEVELOPMENT

(Department of Higher Education)

(O.L. UNIT)

New Delhi, the 5th May, 2015

S.O. 986.—In pursuance of sub-rule (4) of rule 10 of the Official Languages (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Central University of South Bihar, House No. 16/13, Ward No. 9A, New Area, 38, Bisar Gaya-823001 (BIHAR) under the Ministry of Human Resource Development, (Department of Higher Education) as office, whose more than 80% members of the staff have acquired working knowledge of Hindi.

[No. 11011-2/2015-O.L.U.]

SUKHBIR SINGH SANDHU, Jt. Secy.

कृषि मंत्रालय

(कृषि एवं सहकारिता विभाग)

नई दिल्ली, 11 मई, 2015

का.आ. 987.—बहु राज्य सहकारी समिति अधिनियम, 2002 (2002 का 39) के खंड 4 के उप-खंड (i) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत सरकार की अधिसूचना सं. एल-11012/2/2003-एल एण्ड एम दिनांक 20 जून, 2014 के अधिक्रमण में केंद्र सरकार एतद्वारा श्री आशीष कुमार भुटानी, संयुक्त सचिव (सहकारिता) को कृषि मंत्रालय, कृषि एवं सहकारिता विभाग में तत्काल प्रभाव से अथवा अगले आदेशों तक सहकारी समितियों के केंद्रीय पंजीयक के रूप में नियुक्त करती है।

[सं. एल-11012/2/2003-एल एण्ड एम]

दिनेश कुमार, अवर सचिव

MINISTRY OF AGRICULTURE

(Department of Agriculture and Cooperation)

New Delhi, the 11th May, 2015

S.O. 987.—In exercise of the powers conferred vide sub-section (1) of Section 4 of the Multi-State Cooperative Societies Act, 2002 (39 of 2002) and in supersession of the Government of India Notification No. L-11012/2/2003-L&M dated 20th June, 2014, the Central Government hereby appoints Dr. Ashish Kumar Bhutani, Joint Secretary (Cooperation) in the Ministry of Agriculture, Department of Agriculture & Cooperation, as the Central Registrar of Cooperative Societies with immediate effect and until further orders. (Hindi version follows).

[No. L-11012/2/2003-L&M]

DINESH KUMAR, Under Secy.

युवा कार्यक्रम और खेल मंत्रालय

नई दिल्ली, 11 मई, 2015

का.आ. 988.—केन्द्रीय सरकार एतद्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम 1976 के नियम 10 के उप नियम (4) के अनुसरण में युवा कार्यक्रम और खेल मंत्रालय के स्वायत्त कार्यालय भारतीय खेल प्राधिकरण प्रशिक्षण केंद्र, जोधपुर, राजस्थान, जिसके 80% से अधिक कर्मचारीबूंद ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है।

[मि सं. 11011/2/2008-हिं०]

एस. एल. मीना, उप सचिव

MINISTRY OF YOUTH AFFAIRS AND SPORTS

New Delhi, the 11th May, 2015

S.O. 988.—In pursuance of sub rule (4) of Rule of 10 of Official Language (use for official purpose of the Union) Rule 1976, the Central Government hereby notifies

Sports Authority of India Training Centre, Jodhpur, Rajasthan, an Autonomous office of Ministry of Youth Affairs & Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F.No. E-11011/2/2008-H.U.]

S. L. MEENA, Dy. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 23 दिसम्बर, 2014

का.आ. 989.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार केन्द्रीय भण्डारण निगम, पंचकुला के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 1 चंडीगढ़ के पंचाट (संदर्भ संख्या 277/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 22/12/2014 को प्राप्त हुआ था।

[सं. एल-42012/171/2013-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 23rd December, 2014

S.O. 989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 277/2013) of the Central Government Industrial Tribunal-Cum-Labour Court No. 1, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Warehousing Corporation, Panchkula and their workman, which was received by the Central Government on 22/12/2014.

[No. L-42012/171/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I,
CHANDIGARH

Case No. ID No. 277 of 2013, Reference no. L-42012/171/2013/IR (DU) dated 26.2.2014

Sh. Satta Ram son of Shri banarsi Ram,

Village & PO Mohal Khera,

Tehsil Narwana, Jind (Haryana).

....Workman

Versus

1. The Regional Manager,
Central Warehousing Corporation,
Chandigarh Region,
Bay No. 35-38, Sector-4,
Panchkula (Haryana)-134112 Respondent

Appearances :

For the Workman : None.
 For the Management : Shri N.K. Zakhmi.

AWARD

Passed on: 15.12.2014

Government of India Ministry of Labour vide notification No. L-42012/171/2013/IR (DU) dated 26.2.2014 has referred the following dispute to this Tribunal for adjudication:

Term of Reference:

"Whether the action of the Management of Regional Manager, CWC, Panchkula in terminating the services of Sh. Satta Ram son of Shri Banarsi Ram workman of Narwana Depot is just and legal? If not, to what relief the workman is entitled to?

2. Case repeatedly called. None appeared for the workman nor any claim statement has been filed. As per record already three opportunities have been allowed to file claim statement. None appeared on behalf of the workman despite notice. It appears that the workman is not interested to pursue the present reference. In view of the above the present reference is disposed off for want of prosecution.

3. Reference is disposed off accordingly. Central Govt. be informed. Soft copy as well as hard copy be sent to the Central Govt. for publication.

Chandigarh.

15.12.2014 S.P. SINGH, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 990.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में एंडू यूल कंपनी लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय चेन्नई के पंचाट (संदर्भ संख्या 80/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-42011/83/2013-आई आर (डीयू)]
 पैग के वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. 80/2013) of the Central Government Industrial Tribunal-Cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Andrew Yule Company Ltd. and their workman, which was received by the Central Government on 01/05/2015.

[No. L-42011/83/2013-IR(DU)]
 P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
 CHENNAI**

Wednesday, the 22nd April, 2015

Present: K. P. PRASANNA KUMARI,
 Presiding Officer

Industrial Dispute No. 80/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Andrew Yule and Company Ltd. and their workman)

BETWEEN

The General Secretary : 1st Party/Petitioner Union
 Andrew Yule Staff and
 Workers Union
 1, Rajiv Gandhi Road,
 Kandanchavadi, Chennai-600096

AND

1. The General Manager : 2nd Party/1st Respondent
 M/s Andrew Yule and
 Company Ltd.
 5/346, Rajiv Gandhi Salai
 (Old Mahabalipuram Rd.)
 Perungudi
 Chennai-600096
2. The Director : 2nd Party/2nd Respondent
 (Personnel)
 M/s Andrew Yule & Company Ltd.
 8, Dr. Rajendra Prasad Sarani
 Kolkata-700001

Appearance:

For the 1st Party/ : M/s N. Ajoy Khose, Advocates
 Petitioner Union

For the 2nd Party/1st : M/s T.S. Gopalan & Co.
 and 2nd Management Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-42011/83/2013-IR(DU) dated 25.07.2013 referred the following Industrial Dispute to his tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the transfer of Sri P. Soundararajan by M/s. Andrew Yule and Company Ltd. from Perungudi factory, Chennai to Kalyani Works, Kolkata is legal and justified? To what relief the workman is entitled to?

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 80/2013 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively. The petitioner has filed rejoinder in reply to the Counter Statement.

3. The contention in the Claim Statement filed by the petitioner in brief are these:

M/s. Transformer and Switchgear Ltd., a factory at Adyar run by private management was taken over by Andrew Yule and Company, the Second Respondent, a Government of India Undertaking, in the year 1987. A factory was later started at Perungudi. Now the Adyar factory is closed and the entire manufacturing activities are shifted to Perungudi factory. When the factory was under the private management the conditions of service of the workmen were governed by Certified Standing Orders of the then Management. Even after the factory was taken over by the Government of India the workmen continued to be governed by the same Certified Standing Orders. Soundararajan who is the Secretary of the Petitioner Union has entered service of the First Respondent as a Mechanist (Trainee) Earlier he was a member of the Union affiliated to CITU. He has always been fighting for the cause and welfare of the workmen. He was fighting against the policies and management of the officials if the same were against the interests of the Company. This was not liked by the Management. The Management issued an order on 16.05.2011 transferring Soundararajan from Chennai to the factory at Kalyani at West Bengal. Soundararajan filed Writ Petition in the High Court of Madras and the order of transfer was stayed by the High Court. Soundararajan later withdrew the Writ Petition.

The Petitioner Union took up the issue with regard to transfer and raised dispute before the Labour Commissioner. There is no provision for transfer in the Certified Standing Orders. So the transfer order is issued without any authority and is illegal. Though the Second Respondent has submitted a draft Standing Order for amendment including a clause for transfer, the same was not certified. The clause regarding transfer in the Appointment Order is inoperative in the absence of any provision in the Certified Standing Orders. The Certified Standing Orders will prevail over the Appointment Order. The Chennai factory where Soundararajan, the concerned workman has been working is under Electrical Division whereas the factory to which he is sought to be transferred is under the Engineering Division. In the Winding Department where the concerned workman was employed, 24 employees are required. However only 16 employees are working in the said department. When there is shortage of manpower in the department, there was no reason to transfer the workman concerned. the wages and conditions of service in Chennai factory and the factory at Kalyani are totally different. So there could not have been a transfer

without issuing notice under Section-9A of the ID Act. The concerned workman could not have been transferred without his consent also. the transfer amounts to unfair labour practice in the absence of any provision for the same. The transfer order is illegal for the above reasons. An order may be passed holding that the action of the Respondents in transferring Soundararajan is illegal and unjustified and also directing the Respondents to permit him to continue in service at Chennai unit with continuity of service, back wages and other benefits.

4. The Respondents have filed Counter Statement contending as below:

The cause of the concerned workman was not espoused by a substantial section of the workmen of the establishment. The concerned workman was working as a Turner-cum-Mechanist in Switchgear Operations in Adyar factory. On closure of Adyar factory in the year 2008 the concerned workman was shifted to Perungudi factory where his service as Mechanist could not be utilized. He was assigned the work of a Helper to assist the Winder in the Transformer Operations solely to protect his employment. The concerned workman who had contested election of CITU in 2008 did not get elected and since then he had resorted to confrontational attitude towards the management. He became a member of the Petitioner Union and got elected as the Secretary. He started showing total defiance to the Management and was never amenable to any discipline. He created a very chaotic and tense situation in the factory which led to suspension of operation of the factory from 18.01.2010. During the period of suspension of operation a long term settlement was concluded.

On 31.12.2010 the concerned workman forcibly brought one Ramesh, an employee who was proceeded with by way of disciplinary action inside the factory and disrupted the normal functioning of the factory. He never remained in the place of his work. He used to pick up altercation with the Engineers. He was not allowing the external security system to carry out the checking of employees at the factory gate. Often work was interrupted because of the interference of the concerned workman. The presence and absence of workman used to make all the difference as far as orderly working of the factory was concerned. In order to deal with the problem of the concerned workman the Management had no option than to take recourse to shift his place of work from Chennai to Kolkata. By order dated 16.5.2011 he was transferred to Kolkata. It is not a vindictive action nor as an act of victimization for Trade Union activities. The transfer was resorted to as there was no other manner by which the concerned workman could be corrected and made into a useful workman for productive purpose. It was an exigency of business. If the concerned workman goes to Kalyani and works there for a minimum of 150 days, the Respondent would be willing to consider his re-transfer. Since May

2011 the factory has been working without any interruption. An award may be passed upholding the transfer.

5. The petitioner has filed rejoinder denying the allegations made against him in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and WW2 and MWs 1 to 3 and documentary evidence consisting of Ext. W1 to Ext. W27 and Ext. M1 to Ext. M50.

7. The points for consideration are:

- (i) Whether the action of the Management in transferring Soundararajan from the factory at Perungudi, Chennai to Kalyani, Kolkata is legal and justified?
- (ii) What is the relief, if any, to which Soundararajan is entitled?

The Points

8. Soundararajan the concerned workmen on whose behalf the dispute is raised was the Secretary of the Petitioner Union. Initially he had been a member of the Union attached to CITU. Subsequently, he had became a member of the Petitioner Union and has been elected as the Secretary of the Union. The concerned workman who was working in the factory at Chennai was transferred to the factory at Kalyani, West Bengal by order dated 16.05.2011. Rather than proceeding to Kalyani and joining there, the concerned workman filed a Writ Petition before the Hon'ble High Court of Madras and obtained stay of operation of order of transfer. He later withdrew the Writ Petition and the Petitioner Union raised the dispute on his behalf. The Petitioner has stated in the Claim Statement that it has taken up the issue regarding the transfer of Soundararajan, the concerned workman and had passed a resolution in the General Body Meeting held on 01.11.2011 and decided to raise the dispute against the illegal transfer. In the Counter Statement the Respondents have stated that the cause of the concerned workman was not espoused by a substantial section of the workmen of the establishment. It is also stated that the petitioner is to prove that it is duly authorized in the manner known to law to take up the cause of the concerned workman and raise an industrial dispute. However, during the stage of trial the counsel for the Respondents has endorsed that the objection about the validity of the industrial dispute on the ground of incompetence of the Union to raise the dispute is not pressed. This amounts to admission on the part of the Respondents that the Petitioner Union has sufficient authority to take up the cause and raise the dispute.

9. The Respondents have justified the order of transfer of the concerned workman from Chennai to Kolkata stating that he was perennially creating problems in the factory at Chennai and even the work of the factory used to get interrupted because of the problems created by him.

The stand of the Respondents is that the Management has the legal authority to transfer the concerned workman since the Appointment Order itself provides for it. It has been brought out during cross-examination of WW1 who is the present General Secretary of the Petitioner Union that there were other instances of such transfer also. Apart from questioning the illegally and absence of the necessity of transfer on other grounds, it is also contended by the petitioner that the transfer is without any authority in the absence of any provision for the same in the Certified Standing Order governing the workmen of the factory. As could be seen, the factory was originally situated at Adyar and was under private management. It was taken over by the Second Respondent, a Govt. of India Undertaking in the year 1983. Later another factory was started at Perungudi, Adyar factory was later closed and all the manufacturing activities were shifted to the factory at Perungudi. While the factory was under private management it had a Certified Standing Orders governing the conditions of service of the workman. According to the petitioner even though amended standing order was submitted after the factory was taken over by the Second Respondent, it was not certified and the Certified Standing Order of the factory while under private management prevailed even after it was taken over by the Government. It is not disputed by the Respondents that after taking over the Standing Orders was not amended or certified. MW1 who is an Officer of the Second Respondent has also stated that the Certified Standing Orders, now applicable is the one which was existing even before the Respondent was taken over by the Government.

10. The Contention that is raised by the petitioner with reference to the Standing orders is that there is no provision in the Certified Standing orders which is applicable to the concerned workman for transfer of a workman and therefore the Respondents have no authority to transfer him at all. In fact it is on the basis of the clause in Ext. W2 the appointment order that the Respondents are contending that they have the power of transfer. Clause-5 of the Appointment Order states that the concerned workman is liable for transfer to any of the Company's units or subsidiaries or associated companies anywhere in India. Admittedly, there is no provision for transfer of a workman in the Ext. W15—the Certified Standing orders of the Second Respondent establishment. The counsel for the Respondents tried to justify the order of transfer stating that Tamil Nadu Industrial Employment Standing Order Rules under which Ext. W15 is certified does not provide for transfer and so there is no illegality in providing for transfer in the Appointment Order and transferring the employee on the basis of it. After the establishment was taken over by a Government of India Undertaking the Industrial Employment Standing Order Central Rules would have been applicable and the Respondents could have provided for transfer by amending the Standing Orders

since the Central Rules provide for transfer. However, this was not done. Section-3(2) of the Industrial Employment (Standing Orders) Act states that provisions shall be made in the draft Standing Order for every matter set out in the schedule which may be applicable to the Industrial establishment and where model Standing Orders have been prescribed, shall be, so far as practicable in conformity with such model. The counsel for the Respondents has referred to Section-12(A) of the Standing Orders which states that for the period commencing on the date on which the Act becomes applicable to an industrial establishment and ending with the date on which the Standing Orders as finally certified under the Act come into operation the prescribed Model Standing Order shall be deemed to be adopted in the establishment. The counsel argued that the clause in the letter of appointment will prevail in view of this provision. However, this argument could not be accepted since there is already a Certified Standing Order for the establishment. The Apex Court has held in the decision in WESTERN INDIA MATCH CO. LTD. VS. WORKMEN reported in 1974 3 SCC 330 that as long as the Standing Order is in force it is binding on the Company as well as on the workman. In the establishment referred to in the above case the Standing Orders provided for probation of two months while the letter of appointment stated that the employee will be on probation for a period of six months. The Apex Court has held that the special agreement by way of clause in the appointment order is inconsistent with the Standing Order and he cannot be kept on probation for six months against what is provided under the Standing Order. The Apex Court laid down that if a prior agreement inconsistent with the Standing Orders will not survive, an agreement posterior to and inconsistent with the Standing Order should also not prevail. Again, as the employer cannot enforce two sets of Standing Orders governing the classification of workmen it is also not open to him to enforce simultaneously the Standing Orders regulating the classification of workmen and a special agreement between him and the individual workman settling his categorization, it was also held. So in spite of a clause in Ext.W2 providing for transfer it was not open to the Respondents to transfer the concerned workman in the absence of a provision for the same in the prevailing Certified Standing Orders. For this reason itself the transfer is illegal.

11. As per Rule-4 of the Industrial Establishment Standing Orders (Central) Rules, the workman can be transferred according to exigencies of work from one department to another or from one station to another or from one establishment to another under the same employer provided that the wages, grade, continuity of service and other conditions of service of the workman are not adversely affected by such transfer. It is further provided that where the transfer involves moving from one State to another such transfer shall take place either with the consent of the workman or where there is specific provision to that effect

in the letter of appointment and provided also that the reasonable notice was given to such workman. As already stated, in the absence of provision in the Standing Orders the transfer itself is not legal in spite of a provision in the Appointment Order. For transfer in such a circumstance, the consent of the concerned workman should have been obtained. Apparently, no such consent was obtained.

12. It has been contended on behalf of the concerned workman that service conditions at the transferee establishment is quite different from what exists in the establishment at Chennai. It has been pointed out that at Chennai he has been working in Electrical Department while he has been transferred to Engineering Department at Kalyani in Kolkata. In the transfer order, there is certainly a clause that except as stated in the order the terms and conditions of employment will remain unaltered. Probably, this implies that there will be no difference in the pay packet obtained by the concerned workman. However, there is no guarantee that there is no change in the other working conditions at Kolkata. Ext.W-6, the transfer order states that the workman will be guided by the working hours, weekly off days, festival and other holidays prevalent at the factory situated at Kolkata. It is pointed out by the counsel for the petitioner that as per Schedule-IV of the Industrial Disputes Act, hours of work and rest intervals, leave with wages and holidays and classification by grades are conditions of service for change of which notice is to be given. There is no assurance in the transfer order that these conditions of service are protected. MW1 has stated during his cross-examination that he does not know if wages payable to workers in West Bengal is different from the unit at Perungudi. He then stated that the wage conditions and settlement in other units are different. At Perungudi unit the concerned workman was working in Grade-V. It is not stated in the transfer order that he will be put in the same grade in the factory at Kalyani, Kolkata. At Perungudi unit transformers are made and the concerned workman who was a Mechanist was working in the Winding Section. It is not known whether he can work in the same category in the Engineering Department at Kalyani. Thus, there is nothing to show that service conditions were protected on transfer. A reading of the transfer order spells otherwise. In spite of that notice under Section-9A of the Industrial Disputes Act has not been given. It is pertinent to notice that the workers including the concerned workman were given such notice even when they were shifted from the factory at Adyar to Perungudi. The Apex Court has held consistently that transfer must be to an equivalent post. In the decision in the TEJSHREE GHAG AND OTHERS VS. PRAKASH PARSHURAM PATIL AND OTHERS reported in 2007 6 SCC 220, it has been held that an order of transfer cannot prejudicially affect the status of an employee in which case it would be violative of the conditions of service and thus illegal. It was further held that an executive order of transfer for unauthorized purpose would amount to malice in law. In the absence of evidence of transfer having

been effected to a post with equivalent service conditions itself it is illegal.

13. In the order to transfer no reason has been given for transfer. In Ext.W11 the reply filed by the Respondent before the Assistant Labour Commissioner the stand is that the transfer is for business exigencies. It is further stated that on the face of no need of Machinist at the factory and Sri Soundararajan having resorted to unfair labour practice by unnecessarily non-complying with the reasonable instruction of the superior transfer has become necessary. Thus it could be seen from Ext.W11 that at that time a vague contention that the transfer is also since the Machinist is not required at Adyar factory is also put forth. However, the evidence reveals that it is not the case. After 2000 settlement the classification based on trade has been given up and workers were asked to do all jobs. The classification was based on skill only. The concerned workman was a Grade-V workman even when he was shifted to Perungudi. The case in the Counter Statement is that the concerned workman was put up as Helper only to adjust him in the factory though the post suitable to his grade was not available at Perungudi factory. However, it has come out during evidence that this case of the Respondent is not correct. MW3 has admitted during his cross-examination that each employee in the factory was assigned with a token number. The Helpers will not be given token numbers. No documents are available to show the manpower requirement at Perungudi as on the date of the transfer of the concerned workman. MW3 has stated that work was available at Perungudi and it is in spite of that the concerned workman was transferred. It has been pointed out by the counsel for the petitioner that it has come out in evidence that trainees were taken as Helpers and this was because sufficient hands were not available. This, as stated by the counsel, would show that work was available at Perungudi factory and it was not because the concerned workman's skill was not required at Perungudi he was transferred. Such transfer amounts to unfair labour practice.

14. In the Counter Statement the stand taken by the Respondents is that it has become impossible to retain the concerned workman at the factory for continuous misconducts on his part and exigency of business has necessitated his transfer. It is stated in the Counter Statement that the concerned workman was showing total defiance to the Management and was never amenable to any discipline. He is said to have created chaotic and tense conditions which even led to suspension of operation of the factory from 18.01.2010. Another allegation is that on 31.12.2010 the concerned workman brought in an employee who was under suspension and disrupted the functioning of the factory. It is alleged that he was never remaining in the place of work allotted to him. He is said to have been picking up altercations with the Engineers. He was not allowing the external security system to check the employees at the factory gate. According to the Respondents, the

local Management had considered the question of taking disciplinary action against the concerned workman for his various acts of misdemeanor. But having felt that a lenient punishment would not make him mend his way they have resorted to the course of shifting his place of work from Chennai to Kolkata. It is claimed that it is not a vindictive action.

15. The Respondents have tried to justify the transfer of the concerned workman through the evidence of MWs1 to 3 and a few documents pertaining to the past conduct of the concerned workman. It would be relevant to examine the evidence given by each of these witnesses. MW1 who is working as Production-In-Charge at Perungudi factory has given instances which according to him would show that the concerned workman was unruly by nature and was creating nuisance at the factory by his various misdeeds. As a general statement it is stated that the concerned workman had no commitment to the work. It is then stated that on death of one Lakshmanan against whom disciplinary action had earlier been taken the concerned workman had attempted to trigger an industrial unrest. So also, on one occasion, in protest to the delay in arriving at a settlement on the charter of demands he had threatened to immolate himself by holding a petrol can in his hand. The concerned workman is said to have incited the workman to boycott Ayutha Puja celebrations of 2009 as a protest against delay in finalization of the settlement. It is also stated that the concerned workman had instigated an operator in the Winding Department to unwind two extra disc of winding already completed by another workman. Five Section Heads of the factory is said to have asserted that so long as the concerned workman was in the factory there was no scope to have continuous uninterrupted and normal production activities in the factory. According to MW1, not a day would pass without the concerned workman bringing some issue or other to him for discussion. If he is not available he will go and disturb the General Manager.

16. It could be seen from the evidence of MW1 that he has given evidence regarding many aspects which are not specifically stated in the Counter Statement at all. Even in the Counter Statement it has been stated that the facts alleged were not put on record. MW1 has stated during his cross-examination that it was because of tool down strike on the part of the workers that operations had to be suspended for some time in the year 2010. In that case, it is not known how suspension of operation is attributed to the concerned workman in the affidavit. Laskmanan against whom disciplinary proceedings were taken is said to have been instigated by the concerned workman. But there is nothing to show that he has got any part in the misconduct by Lakshmanan. MW1 admitted that regarding any of the allegations made by him in the affidavit against the concerned workman memo has not been issued nor was his explanation obtained.

17. MW2 who is the Supervisor-in-Charge of the Insulation Department and Winding Section of the Production Department has also stated that the concerned workman used to approach him with some or other issue and indulge in needless discussions. According to him, in the year 2008 an Engineer had informed him that the concerned workman was found exposing his body after removing his uniform. He had been sitting in the area in the Canteen meant for Officers and doing his Union work. This has compelled the Management to restrict the opening of the Canteen Hall premises during breakfast, lunch and evening tea time only. MW1 stated during his cross-examination that he had not given any complaint against the concerned workman regarding the allegations made in the affidavit. None of the Supervisors also have given any written complaint though they have given oral complaints. MW2 did not enquire with the concerned workman regarding the veracity of the oral complaints. Memo was never issued to him regarding the allegations made in the affidavit. MW2 has further stated that if a person moves out of the work place it would reflect in the Log Books and from the Log Book it can be ascertained if the person has moved out of the work place or not. However, the Log Books were not produced. Thus the evidence given by MW2 also is not supported by any other material.

18. MW3 is working as Officer (Personnel) at Perungudi factory. This witness has alleged that most of the time the concerned workman would be away from the spot and would be disrupting work of others also. This witness also has stated about the concerned workman instigating one Lakshmanan to rewind the coil completed by another workman. He has also stated that the area meant for Officers in the Canteen was being used by the concerned workman for his Union activities. According to this witness the Engineers and Supervisory staff have stated that one reason for lack of performance resulting in failure to achieve the output as per schedule was a distraction caused by the concerned workman. This witness has further stated that when a surety for the loan taken by the concerned workman retired, he could not find a substitute among the workman since no one was prepared to stand surety for him. Even as admitted by MW2 there is no evidence to show that the production was slow when the concerned workman was in the factory and it has accelerated in his absence. So far as the failure of the concerned workman to substitute the surety is concerned MW3 himself has admitted that once a workman is transferred a worker of the factory will not be accepted as surety. According to the concerned workmen, it was for this reason he was not able to substitute the retired surety after the transfer order was served on him. So it is not for fault of the workman concerned that the surety was not replaced.

19. The Management has produced certain documents to prove that the past conduct of the concerned workman was not satisfactory. Ext.M1 is a charge sheet

that had been issued to the concerned workman on account of his habitual late attendance. Ext.M18 is the communication given to the concerned workman stating that there was no improvement in his conduct and he continued to come for duty later. Ext.M2 is a communication to the concerned workman alleging that he had misused the permission given to him to attend a funeral and had entered the factory premises to gather workmen. The concerned workman, even as admitted by him refused to receive this communication. He has admitted the endorsement in Ext.M2 by the Officer of the Respondent to the effect that he refused to accept it stating that it was not addressed to him in his capacity as the General Secretary of the Union. Ext.M4 is the letter to the concerned workman in December 2007 stating that he had forcibly gone out of the factory main gate without movement pass. Ex.M6 another communication alleges that he refused to leave the Dining Hall and the Hall could not be locked. Ext.M49 is the letter given to the concerned workman asking him not to repeat such acts. Ext.M7 is the memo given regarding some dispute raised by the concerned workman on punching and Ext.M5 is the reply given by him. It is stated that all other workers had activated the Punching Machine but the concerned workman had refused. Ext.M8 is the charge sheet dated 18.02.2011 regarding this and Ext.M9 is the explanation given by the concerned workman on 21.02.2011. The above documents are brought in to show that the concerned workman was a perennial nuisance and trouble monger to the management and it would not have been possible to run the factory with him at the factory. All the above of course refer to certain misconducts on the part of the concerned workman. But the reasons that prompted the Management to remove the concerned workman are some other incidents about which there is no acceptable evidence. If the incidents referred to are true and were incidents which could not be pardoned, the Management should have taken action then and there. On the other hand, no documents are available regarding the misconducts alleged. The statement of the Management that it has become helpless since other workman have not been willing to support the Management as they were afraid of the concerned workman is not one that can be accepted. MW2 has stated that the establishment is very capable of maintaining discipline in the factory. So there was no question of leaving the concerned workman to himself, to his whims and fancy in spite of allegations of such misconducts. Even assuming that the concerned workman had committed the misconducts alleged the proper procedure would have been an enquiry and penalty in accordance with the procedure. Rather than doing this, the Management has decided to give a transfer to the concerned workman under the cover of exigency of business which did not exist at all. The Apex Court has laid down in the decision in SOMESH TIWARI VS. UNION OF INDIA AND OTHERS reported in 2009 2 SCC 592 that a transfer on the basis of a non-existent facts is a malice in law and punitive

in nature. The transfer cannot be termed to be one of business exigency. The transfer is not justifiable on facts also. The concerned workman is entitled to continue as a workman in the factory of the Second Respondent at Perungudi, Chennai.

In view of my discussion above the Respondents are directed to take back the concerned workman in service in the factory at Perungudi, Chennai within a month of the award with 25% back wages and other attendant benefits. In case of failure to pay the back wages within a month of the award it would carry interest @ 9% per annum.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 22nd April, 2015)

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner Union	:	WW1, Sri E. Elumalai WW2, Sri P. Soundararajan
For the 2nd Party/ Management	:	MW1, Sri G.R. Pugalendhi MW2, Sri M. Rajadurai MW3, Sri S. Balasundaram

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	26.10.1987	Machinist trainee order
Ex.W2	30.09.1988	Appointment order
Ex.W3	30.03.1989	Confirmation order
Ex.W4	26.12.1994	Order issued to the petitioner
Ex.W5	07.04.2010	18(1) Settlement
Ex.W6	16.05.2011	Transfer Order
Ex.W7	17.05.2011	Letter given by the 1st party to the 2nd party management
Ex.W8	17.05.2011	Letter given by the 1st party to the Assistant Labour Commissioner (Central)
Ex.W9	19.05.2011	Letter given by the 1st party to the Assistant Labour Commissioner (Central)
Ex.W10	09.11.2011	2(K) petition filed by the 1st party union before the ALC
Ex.W11	28.11.2011	Reply filed by the 2nd Party
Ex.W12	15.06.2012	Rejoinder filed by the 1st party
Ex.W13	24.01.2013	Failure report
Ex.W14	25.07.2013	Order of reference
Ex.W15	—	Certified Standing Orders

Ex.W16	26.12.1983	Copy of the Central Act No. 41, 1983
Ex.W17	21.03.1986	Certificate of training issued to the workmen concerned by the Small Industries Development Organization
Ex.W18	29.11.2000	Copy of the 18(1) settlement
Ex.W19	29.06.2007	Notice issued by the 2nd party under Section-9A of ID Act
Ex.W20	07.04.2010	Copy of the wages settlement
Ex.W21	04.05.2011	Copy of the production report of the winding department
Ex.W22	May 2011	Pay slip of the concerned workmen
Ex.W23	—	List of employees employed under the 2nd party management showing the details of education qualification under the grade
Ex.W24	—	Copy of the family card
Ex.W25	23.04.2013	Certificate issued by the Election Officer
Ex.W26	23.04.2013	Certificate issued by the Election Officer
Ex.W27	08.05.2013	Order issued by the Deputy Registrar of Cooperative Societies
On the Management's side		
Ex.No.	Date	Description
Ex.M1	12.10.1991	Charge Sheet dated 12.10.1991 issued to P. Soundararajan for habitual late attendance, his explanation dated 24.10.1991 and awarding him punishment of severe warning by its letter dated 23.11.1991
Ex.M1(A)	24.10.1991	Letter from P. Soundararajan to the Respondent regarding reply to memo dated 22.10.1991
Ex.M2	08.10.1998	Warning letter issued by Respondent to P. Soundararajan for misuse of permission
Ex.M3	01.03.2004	Letter from respondent issuing warning to P. Soundararajan not to indulge in such acts of misconduct in future. For not wearing uniform and for sitting in shop floor shulter between 09.45 to 12.40 asking for medical treatment
Ex.M4	08.12.2007	Management letter issuign warning to P. Soundararajan regarding his misbehavior on 07.12.2007

Ex.M5	17.12.2007	Letter of P. Soundararajan in respect of the incident on 07.12.2007		Perungudi factory to report for duty effective 09.04.2010	
Ex.M6	30.05.2008	Report from Deputy Manager—Security to the Respondent regarding the conduct of the P. Soundararajan on 29.05.2008 AN	Ex.M17	18.12.2010	Memo issued to K. Ramesh suspending him pending issue of charge sheet and enquiry for manhandling Security Supervisor
Ex.M7	11.10.2010	Memo to P. Soundararajan by the Respondent for non-activating his new employee number as required by the Management	Ex.M18	23.11.1991	Memo for late coming by Senior Manager
Ex.M8	18.02.2011	Charge sheet issued by the Respondent to P. Soundararajan for willful insubordination and disobedience of lawful and reasonable orders (for not activating his new employee number in respect of repeated advise on several occasions)	Ex.M19	26.04.2000	Advise letter from the Respondent to P. Soundararajan to conduct himself in a decent manner in future
Ex.M9	21.02.2011	Explanation of P. Soundararajan to the charge sheet dated 18.02.2011	Ex.M20	13.06.2001	Exchange of communication between Security Staff/Respondent factory at Perungudi dated 12.06.2001, 13.06.2001, letter dated 13.06.2001 from Ex-Servicemen Security Bureau to the Respondent factory at Perungudi leveling allegations against Sundarajan and Sundarajan's counter allegation dated 13.06.2001 on Security Staff—to DGM—Perungudi Factory
Ex.M10	03.01.2011	Charge sheet-cum-show cause notice issued to P. Soundararajan for various acts of misconducts in terms of Standing Orders calling for his explanation	Ex.M21	29.12.2001	Confidential report by Security Bureau to the Dy. General Manager, Perungudi factory informing about the indiscipline and interference of P. Soundararajan
Ex.M11	03.11.2008	Letter from Respondents to the Inspector of Factories, Chennai informing to treat the unit at Perungudi as closed	Ex.M22	09.01.2002	Report from Adyar works to the Respondent regarding the incident happened at the Security Gate at Adyar works on 08.01.2002
Ex.M12	24.03.2009	Letter from the Respondent's Perungudi Factor to Inspector of Factories furnishing for the details as required by Inspector of Factories	Ex.M23	09.01.2002	Letter from Security Bureau to the Security Officer—at Perungudi Factory
Ex.M13	02.05.2008	Letter from Andrew Yule Staff and Workers Union, Chennai addressed to Respondent at Perungudi informing list of Office Bearers and Committee Members for 2008-2009	Ex.M24	10.01.2002	Letter from Security Bureau to DGM—Perungudi factory enclosing statement of K. Manoharan—A.S.O.
Ex.M14	28.06.2008	Letter from Andrew Yule Staff and Workers Union, Chennai addressed to Deputy General Manager, Perungudi factory regarding appointment of new General and Joint Secretary of the Union for the year 2008-2009	Ex.M25	09.01.2002	Report to Manager (Production) on the incident on 08.01.2002 at Adyar Factory enclosing Manoharan's statement
Ex.M15	18.01.2010	Notice exhibited by Respondent at Perungudi regarding cessation of work at its factory at Perungudi effective from 18.01.2010	Ex.M26	10.01.2002	Charge Sheet issued to P. Soundararajan in respect of various allegations leveled against him
Ex.M16	07.04.2010	Notice from respondent factory, Perungudi advising the workmen at	Ex.M27	10.01.2002	P. Soundararajan's letter asking the management to take action against the Security Officer
			Ex.M28	19.01.2002	Letter from P. Soundararajan praying time to give explanation to the charge sheet dated 10.01.2002

Ex.M29	22.01.2002	Respondent's reply to P. Soundararajan—granting a week's time	Ex.M41	21.02.2003	Letter from Respondent to Enquiry Officer accepting his unwillingness to continue as Enquiry Officer
Ex.M30	01.02.2002	Note from the Assistant Manager—Personnel dropping further action in respect of the charge sheet dated 10.01.2002 issued to P. Soundararajan	Ex.M42	26.02.2003	Letter from Respondent to P. Soundararajan cancelling the enquiry fixed on 27.02.2003
Ex.M31	01.10.2002	Complaint of M. Edward John—Supervisor allegation Sundararajan hitting of the back of Subramaniam, employee of society inside the factory premises on 01.10.2002	Ex.M43	27.02.2003	Proceedings of Assistant Manager—Personnel to the Respondent that the enquiry could not be completed as the Enquiry Officer decided not to continue the present enquiry and further enquiry proceedings not initiated
Ex.M32	01.10.2002	Letter from Andrew Yule and Co. group of employees Coop. thrift and Credit Society Ltd., addressed to Respondent	Ex.M44	27.09.2003	Complaint letter from Nagarajan, Quality Control Department of Respondent Factory, Adyar addressed to In-charge (Planning) regarding absence of P. Soundararajan from work on 04.09.2003 AN
Ex.M33	01.10.2002 30.10.2002	Counter allegation of P. Soundararajan addressed to Respondent at Perungudi factory on 01.10.2002 to take action on Subramaniam	Ex.M45	10.10.2003	Letter from Respondent to P. Soundararajan informing that his absence in the afternoon will be treated as absence on loss of pay
Ex.M34	05.10.2002	Charge Memo issued by Respondent to P. Soundararajan for hitting Subramaniam (employee of Coop Society) in the factory premises on 01.10.2002	Ex.M46	10.09.2003	Letter from Production Supervisor to Assistant Manager—Personnel complaining P. Soundararajan refusing to take back LTA leave application as it had already lapsed
Ex.M35	17.10.2002	Explanation given by P. Soundararajan to the charge memo dated 05.10.2002	Ex.M47	26.02.2004	Complaint of the Edwin John, to the Assistant Manager-Personnel about P. Soundararajan not wearing uniform and sitting near shutter in the Factory
Ex.M36	25.11.2002	Proceedings of enquiry in respect of the allegations mentioned in charge sheet dated 05.10.2002	Ex.M48	07.12.2007	Report from Deputy Manager—Security against Mr. P. Soundararajan trying to go out of the factory without movement pass
Ex.M37	20.01.2003	Letter from P. Soundararajan to Enquiry Officer requesting Tamil translation of the complaint	Ex.M49	30.05.2008	Memo from Respondent to P. Soundararajan advising him (not to repeat such acts in future) regarding his conduct on 29.05.2008 staying in dining hall
Ex.M38	20.01.2003	Proceedings of enquiry on 20.01.2003 and furnishing Tamil translation of the complaint of J. edwin John regarding hitting of Subramanian	Ex.M50	24.02.2011	Letter from Respondent to P. Soundararajan severely warning him in respect of charge sheet dated 18.02.2011.
Ex.M39	07.02.2003	Letter from the Respondent to P. Soundararajan accepting his request to postpone the enquiry from 07.02.2003 to 13.02.2003			नई दिल्ली, 5 मई, 2015
Ex.M40	13.02.2003	Proceedings of enquiry and posting the enquiry to 27.02.2003 due to riotous behavior of P. Soundararajan in the enquiry on 13.02.2003			का.आ. 991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ऑडिनेन्स क्लोथिंग

फैक्ट्री के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 57/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 27/04/2015 को प्राप्त हुआ था।

[सं. एल-14012/58/2003-आईआर (डीयू)]
पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref No. 57/2004) of the Central Government Industrial Tribunal Cum Laobur Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Ordnance Clothing Factory and their workman, which was received by the Central Government on 27/04/2015.

[No. L-14012/58/2003-IR(DU)]
P.K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

SHRI RAKESH KUMAR,
Presiding Officer

I.D. No. 57/2004

Ref. No. L-14012/58/2003-IR(DU) dated: 21.06.2004

BETWEEN

Sh. Amar Nath Yadav, S/o Sh. Raj Deo Yadav
Village Prasadipur, Post: Lutuhi
Distt. Sant Kabir Nagar (UP)

AND

The General Manager
Ordnance Clothing Factory
Shajahanpur

AWARD

1. By order No. L-14012/58/2003-IR(DU) dated: 21.06.2004 between Sh. Amar Nath Yadav, S/o Sh. Raj Deo Yadav, Village Prasadipur, Post: Lutuhi, Distt. Sant Kabir Nagar (UP) and the General Manager, Ordnance Clothing Factory, Shajahanpur to this CGIT-cum-Labour Court, Lucknow for adjudication.

2. The Schedule of reference is as under:

*"1. WHETHER THE CONTRACTS ARE GENUINE
OR MERE A CAMOUFLAGE? 2. IF THE
CONTRACT IS NOT GENUINE AND MERE A
CAMOUFLAGE, WHETHER THE ACTION OF THE
GENERAL MANAGER ORDNANCE CLOTHING*

*FACTORY, SHAHJAHANPUR IN NOT
REGULARIZING THE SERVICES OF SH. AMAR
NATH YADAV S/O SH. RAJ DEO YADAV AND 70
OTHER WORKERS (LIST ENCLOSED) AND
TERMINATING THEIR SERVICES W.E.F. 25/5/2000
IS JUST FAIR AND LEGAL IF NOT FOR WHAT
RELIEF THEY ARE ENTITLED TO?"*

3. The case of the workmen, in brief, is that the workman Amar Nath Yadav who has filed the statement of claim on behalf of all the workmen under dispute, has submitted that all the workmen have been working with the Ordnance Clothing Factory (hereinafter referred to as Factory) management for more than 240 days since their different date(s) of appointment and their services have been terminated by the management *w.e.f.* 25.05.2000 without any rhyme or reason or without giving any notice or notice pay in lieu thereof; or any retrenchment compensations, in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947. It has been submitted by the workmen that they performed permanent nature of work and there exists as many as 3550 vacancies with the management as per reply of the Hon'ble Defence Minister to the Question No. 6982 dated 11.05.2000 even then the management of the Ordnance Clothing Factory has not regularized their services and terminated the same in violation of settled procedure of first come last go. It is also submitted by the workmen that there exist no valid contract system at Ordnance Factory prior to termination of their services and the management of the Ordnance Clothing Factory is their Principal Employers as there exists no registration, of the Factory, before authorities followed regarding registration as Principal Employer under the Contract Labour (Regulation & Abolition) Act, 1970. The workmen have submitted that they have been paid wages directly by the management of the factory and through any other person, including any contractor. It has been alleged by the workmen that the nature of work they performed was perennial in nature and working for long with the management and when they demanded for increase of wages and other benefits such as Provident Fund, Bonus etc. the management of the Factory got annoyed and terminated their services; and engaged new hands to carry out the work done by the workmen under dispute. It is alleged by the workmen that they have worked with the management directly and not under some contract as no tender for issuance of contract was ever published by the management in the news paper, thus, any contract if existed was mere camouflage. It is also submitted by the workman that they have been issued gate pass to enter into the premises of the Factory and their attendance was recorded by the officers of the factory the attendance registers. Accordingly the workmen have prayed that the action of the management of the Ordnance Clothing Factory in terminating their services be declared illegal and they be reinstated with full back wages.

4. The management of the Ordnance Clothing Factory, Shahjahanpur has denied the claim of the workmen by filing its written statement; wherein it has submitted that the Factory is indulged in manufacture of woolen Jersey for supply of the same to Army. The management has submitted that it has regular employees to undertake work relating to clothing items and to meet the requirements of the armed forces on regular basis. It is submitted that the annual requirement of the Jersey has been varying from year to year and in order to meet the urgent requirement, part quantity of knitted component assistance from trade was taken through supply order by engaging contractors by due invitation of bids against tenders etc. It is submitted that for such supply order the contract was made with the various contractors *viz.* M/s S.M. Corporation, Shahjahanpur, M/s Jhanda Gram Udyog, Shahjahanpur and M/s Devi Lal, Shahjahanpur who in turn engage the labourers to carry out the work contracted to them. Accordingly, the management has submitted that the workmen Amar Nath & 70 others are not their regular employees; rather they are the workmen of the contractor; and the Factory is not the principal employer of the workmen under the Contract Labour Act, 1970, therefore, there arises no question of either terminating their services nor making any retrenchment compensation to the workmen. It is submitted by the management that the workmen under dispute are engaged by the contractors as per their requirement, quantum of workload and PDC of the relevant contract, therefore, engagement or termination of the contract labor in the purview of the contractor, as such, the Factory management has got nothing to do in the matter of their engagement or termination or making any notice or notice pay etc. It is also submitted that the workmen preformed casual jobs which was not perennial in nature. It is specifically submitted by the management that the workmen have not been directly engaged by the management nor any payment was made by the Factory, therefore, there arises no question either of their regularization or issuance of any wage slip etc. to the workman; rather it is submitted that a valid contract was placed on the contractors *viz.* M/s S.M. Corporation, Shahjahanpur, M/s Jhanda Gram Udyog, Shahjahanpur and M/s Devi Lal, Shahjahanpur and payment was made to the contractors as per terms and conditions of the contract, therefore, there was no direct payment of wages to the applicants/claimants. It is also submitted by the management of the Factory that it has duly been registered under provisions of the Contract Labour (Regulation & Abolition) Act, 1970 before the office of the Assistant Labour Commissioner (Central) & Registering Officer, Dehradun *vide* certificate of registration No. 07/2003 dated 30.04.2003. Accordingly, the management of the Ordnance Clothing Factory has prayed that the claim of the workmen be rejected being devoid of any merit.

5. The workman has filed its rejoinder; wherein apart from reiterating the facts already stated in the statement of claim, it has been submitted by the workman that the management did not file any certified copy of the registration of the management as a principal employer under the Contract (Regulation & Abolition) Act, 1970. It is also submitted that the management has not filed the registration of the contractors as 'contractor' whose names have been referred by the management, therefore, the workmen under dispute shall be treated as the employees of the principal employer and not of the contractor.

6. The parties have filed documentary evidence in support of their respective stands. The workman has filed photocopy of gate pass, issued to the workmen, medical slip and Lok Sabha Question & Answer 6982 for 11.05.2000.

In rebuttal, the management has filed a statement or supply orders to M/s S.M. Corporation, Shahjahanpur, M/s Jhanda Gram Udyog, Shahjahanpur and M/s Devil Lal, Shahjahanpur, Lok Sabha unstarred question No. 6982 for 11.05.2000 and certificate of registration No. 07/2003 dated 30.04.2003 under Section 7(2) of the Contract Labour (Regulation & Abolition) Act 1970.

From persual of records it is evident that on completion of pleadings, the workman moved an application dated 24.05.2007, paper No. 144/2-144/3 for summoning the documents from the management. After taking into consideration, the objection of the management, this Tribunal directed the management *vide* order dated 18.09.2007 to file the photocopy of relevant contract deeds under which the workers were permitted to enter into the premises of the opposite party; and in compliance thereof the management filed photocopy of contract deeds *vide* application dated 07.11.2007, paper No. C-147 to 147/40.

7. The workmen examined Amar Nath Yadav, Ram Kesh, Mohammad Khalid and Devi Lal; whereas the management examined Sri S.S. Doiphode, Dy. General Manager/Admin in support of their respective pleadings. The parties availed opportunity to cross-examine the witnesses of each other apart from putting oral arguments.

8. Heard the authorized representatives of the parties and perused the documents available on record.

9. The authorized representative of the workmen has contended that the workmen have been working with the management of Factory directly and received wages from them; but the management is trying to prove them the employees of contractor with the help of invalid contracts. It has been contended by the workmen's representative that neither the management of the Ordnance Clothing Factory was registered as Principal Employer nor the so called contractor was registered as contractor under provisions of the Contract Labour (Abolition & Regulation) Act, 1970, therefore, the alleged contract between them was invalid one and was mere camouflage, having no force;

and accordingly, the workmen were the employees of the Factory. It is submitted by the workmen's representative that since the work performed by the workmen was perennial in nature and there existed vacancy in the Factory therefore, the workmen were liable to be absorbed; instead the management has terminated the services of the workmen without complying with the mandatory provisions of the Section 25 F of the Industrial Disputes Act, 1947, ignoring this fact that the workmen had worked for more than 240 days. The workman has relied upon:

- (i) *Director, Fisheries Terminal Division v. Bhikubhai Meghajibhai Chavda 2010 AIR SCW 542.*
- (ii) *H.D. Singh vs. Reserve Bank of India & others (1985) 4 SCC 201.*
- (iii) *General Manager, ONGC, Shilchar vs. ONGC Contractual workers Union 2008 (118) FLR 942.*

10. In rebuttal, the authorized representative of the management has come forward with the argument that the workmen under question are no their employees, employed by them directly; but are employees of the contractor who have been given supply order under urgent demand of clothing. It is contended that the management of the Factory entered into a contract with the contracting firm for supply of the clothing and in result thereof the contractor employed the workmen to carry out the work as per terms and conditions of the contract. It is submitted by the counsel that the Factory never employed the workmen under dispute; but it is contractor who employed them to execute the work awarded to him and was paid accordingly. It is contended that the Factory neither appointed the workman nor made any payment to the workman directly therefore, there arise no question of terminating their services or making any retrenchment compensation etc. to the workman at any point of time. The authorized representative of the management also submitted that the management has duly been registered before the Assistant Labour Commissioner (Central), Dehradun under provisions of the Contract Labour (Abolition & Regulation) Act, 1970; therefore, the contracts entered into by the Factory are valid and not camouflage.

11. I have given my thoughtful consideration to the rival contentions of the learned authorized representatives of the parties and perused the evidence on record in light thereto.

12. As per settled law, this Tribunal has to confine its self within the four corners of the schedule of reference, referred to this Tribunal for adjudication and to answer the appropriate Government accordingly. The schedule of reference dated 21.06.2004 made to this Tribunal is two pointed. The first is regarding validity of the contracts; and the second is regarding legality of non-regularizing of services of the workmen and terminating their services *w.e.f.* 25.05.2000.

13. Thus, firstly, the validity of the contracts is to be considered thoroughly. The management of the Factory has come up with a case that when there is increase in the demand of Jersey, this urgent requirement is fulfilled by issuing tender, inviting bids and awarding supply order through contract with different contractors. It is the case of the management that the workmen under dispute are being engaged by these contractors to carry out the work assigned to them, thus, the work performed by the workmen are not perennial in nature. It is also pleaded by the management that the contractor are paid as per terms of the contract by the management and thereafter they pay their workers engaged by them, therefore, there is no direct engagement of workers by the management. In support of its pleadings the management has filed photocopy of the contract and its certificate of registration No. 07/2003 dated 30.04.2003 under Section 7 (2) of the Contract Labour (Regulation & Abolition) Act 1970. The workman has disputed the genuineness of the contract on the basis that the management did not have any registration at the relevant point of time and the contractors also did not have any registration/license for supply of the workers; accordingly, it is pleaded by the workman that the so called contracts are invalid and mere camouflage.

14. The management has filed as many as three contracts with M/s S.M. Corporation, Shahjahanpur, one contract with M/s Jhanda Gram Udyog, Shahjahanpur and three contracts with M/s Devil Lal, Shahjahanpur. The management has also filed list of workmen along with letter of request of the contractors for issuance of gate pass to their workmen, mentioned in the list. On close scrutiny of all these seven so called contracts bear some serious infirmities, which drags them out of purview of a contract. From perusal of these so called contracts, it becomes apparent that they are not in form of a formal contract as there is no mention of parties between whom the contract is being executed. All the contracts do not bear signatures of the contracting parties on each page of the contract; also they are not sworn before any notary or Competent Authority. However, it appears that the so called contracts, relied upon/filed by the management *vide* application dated 07.11.2007 are just supply order as on the first paper of all the contracts there is a mention of "Supply Order No. & Date". There is description of various terms and condition regarding work and payment etc.; but it cannot be regarded as "Valid Contract" in the eye of law, for the want of formalities mentioned above. However, the workman's witness, Devi Lal who is claimed to be as a contractor has admitted his signatures on only one of the internal page of one of such contract; but that too is just the acknowledgement of the supply order and that cannot be regarded as the signature of a contracting party.

15. Further, the workman has contended that the contract is invalid one because the management did not have its registration as principal employer and the contract

did not have their registration too under the Contract Labour (Abolition & Regulation) Act, 1970. In this regard the management has filed photocopy of its registration certificate No. 07/2003 dated 30.04.2003 under Section 7(2) of the Contract Labour (Regulation & Abolition) Act 1970. A bare perusal of the above certificate itself shows that the management got itself registered only on 30.04.2003; however it could not show any registration in respect of the contractors. Therefore, the contention of the workman got proved that the management did not have its valid registration as principal employer and the contractors too were not registered.

16. Thus, from pleadings of the management itself it is evident that the management had entered into so called contract from 1997 to 2000 with different contractors through invalid contracts; hence, it cannot be said that there was any genuine contract labor system prevailing with the management of the Ordnance Clothing Factory. Hon'ble Apex Court in *Secretary, Haryana State Electricity Board vs Suresh & others 1999 LLJ 1087* has observed as under:

"When these contract workers carry out the work of the principal employer which is of a perennial nature and if provisions of Section 10 get attracted and such contract labor system in the establishment gets abolished on fulfillment of the conditions requisite for that purpose, it is obvious that the intermediary contractor vanishes and along with him vanishes the term 'principal employer'. Unless there is a contractor agent there is no principal. Once the contractor intermediary goes the term 'principal' also goes with it. Then remains out of this tripartite contractual scenario only two parties — the beneficiaries of the abolition of the erstwhile contract labour system i.e. the workmen on the one hand and the employer on the other who is no longer their principal employer but necessarily becomes a direct employer for these erstwhile contract labourers.

Hon'ble Apex Court further observed and under:

"19. It has to be kept in view that this is not a case in which it is found that there was any genuine contract labor system prevailing with the Board. If it was a genuine contract labor system, then obviously, it has to be abolished as per Section 10 of the Contract Labour (Regulation and Abolition) Act after following the procedure laid down therein. However on the facts of the present case, it was found by the Labour Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labor for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labour Court also noted that the Management witness Shri A. K. Chaudhary also could not tell whether Shri Kashmir

Singh was a licensed contractor or not. The workmen has made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labour on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labour (Regulation and Abolition) Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and screen and disguised in almost a transparent veil which could easily be pierced and the real, contractual relationship between the Board, on the one hand, and the employees on the other, could be clearly visualized."

17. In the instant case, the management of the Factory has tried to plead and lead evidence to the effect that there was a contract between the management of the Factory and the various contractors to carry out the extra urgent work; and in order to substantiate this pleading it has filed photocopy of so called contract deed with different contractors, including Devi Lal. Devi Lal in his cross-examination has denied of having any contract with the Factory from 15.-1.1997 to year 2000. However, he has claimed to have worked as Master Crafts Man with the Factory. He stated that he had 100 to 125 workers, who were working with the Factory. He also stated that he and his workers were not given any appointment letter; however they have been given salary slip. The management has tried to plead that Devi Lal was the contractor who entered into as many as three contracts with the Factory but admittedly only one of the so called contract bears signature of Devi Lal on only one page of the so called contract. Apart from photocopy of so called contracts the management of the Factory could not show any documentary evidence regarding issuance of tender notice, bid from the contracts etc. The management also could neither produce any reliable documentary evidence to show that the Factory was registered as principal employer under provisions of the Contract Labour (Regulation & Abolition) Act, 1970 at the relevant point of time; nor any evidence has been led to substantiate that the contractors were registered or had license. However, the registration certificate No. 07/2003 dated 30.4.2003 under Section 7 (2) of the Contract Labour (Regulation & Abolition) Act 1970, filed by the management does not pertain to the relevant period of time; hence unacceptable. Thus, in absence of any registration of the Factory as principal employer and

that of the contracts under the Act, the so called contractor, Devi Lal seems to be just an agent who managed the supply of the labourers to the Factory.

18. Therefore, in view of the facts and circumstances of the case, and law cited hereinabove, I am of considered opinion that the Factory was not a principal employer and the so called contractor(s) were not a licensed contractors under the Contract Labour (Regulation & Abolition) Act 1970, and accordingly, come to the conclusion that the so called contracts are not genuine or mere a camouflage, smoke and a screen and disguised, just to deprive the workmen of their legitimate rights.

19. Now the second issue, involved in the schedule of reference is taken into consideration i.e. When it is established that the contract is not genuine and mere a camouflage then what would be legality of the action of the management of the ordnance clothing factory, Shahjahanpur in not regularizing the services of the workmen and terminating their services w.e.f. 25/5/2000. Thus, the second issue again involves two issues in it; firstly whether the action of the management in not regularizing the workmen was legal; and secondly, the legality of action of the management in terminating the services of the workmen instead of regularizing them.

20. Now coming to the first issue i.e. Right of the workmen regarding regularization, from pleadings and evidence relied upon by the parties, it is established that the workmen were engaged by the contractor to carry out the work of perennial in nature; therefore the contract labour system got abolished. Further neither the factory was registered as principal employer nor the contract had license, making the so called contract between the factory and the so called contractor mere camouflage. Thus, the direct relationship of employer and employee gets established between the management of factory and the workmen. Hon'ble Apex Court in *Secretary, Haryana State Electricity Board vs Suresh & others 1999 LLJ 1087* has relied upon the observation made by it in its decision in *Air India Statutory Corporation etc. vs United Labour Union & others etc. 1997-I-LLJ-1113 SC* as under:

"In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant."

Also, Hon'ble Delhi High Court in CWP No. 1981 of 1997 decided on 29.09.2000, 2001 (1) SCT 1943 has held that

'in case the contractor has not taken a license as required under Section 12 of the Act, then the contract labour shall be treated as direct employees of the Principal employer.'

Thus, from the law pronounced by Hon'ble Supreme Court, it comes out that the principal employer is under statutory obligation to absorb/regularize the contract labour as the linkage between the so called contractor and the employees stood snapped and direct relationship stood restored between principal employer and the contract labour, in the present industrial dispute.

21. Coming to the last issue, under reference i.e. validity of action of the management in terminating the services of the workmen w.e.f. 25.05.2000. The workmen in their statement of claim has pleaded that they have worked continuously with the management of the Factory for more than 240 days and the management has terminated their services without following rule first come last go or serving any notice or notice pay in lieu thereof or any retrenchment compensation. Per contra, the management has come up with the case that the workmen under dispute are not their workmen rather they are workers of the contractors who engaged them to carry out the supply order; and accordingly, their services have never been terminated by them at any point of time.

But as observed above, on the abolition of contract labour system, there existed relationship of employer and employee between the management of the Factory and the contract labour, it can be well concluded that the workmen under dispute were engaged in perennial nature of work and they have worked for more than 240 days in preceding year from the date of their alleged termination. Also, it could be well inferred that the services of all the workmen have been terminated without complying with the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 or giving any notice or notice pay or any retrenchment compensation etc.

Hon'ble Allahabad High Court in *State of U.P. vs. Mahendra Pal Singh & another 2012(2) ALJ 325* while scrutinizing the validity of the award of the Labour Court found that the findings of the Labour Court were not perverse; wherein the Labour Court drawn out a finding that the workman had continuously worked for more than 240 days in twelve calendar months prior to termination of his services; and the termination of services was without any notice and without payment of retrenchment compensation; and accordingly, Hon'ble High Court held that the relief of reinstatement with 60% of back wages, awarded by the Labour Court was justified. Hon'ble High Court in para 47-49 of its judgment, has referred decision of Hon'ble Apex Court in *Krishan Singh Vs. Executive Engineer, Haryana State Agricultural Marketing Board, Rohtak (Haryana) (2010) 3 SCC 637: (AIR 2010 SC (Supp) 787 as under:*

"47.the appellant worked as a daily wager under the respondent from 1.6.1988. His services were terminated in December, 1993. He served a notice of demand dated 30.12.1997 on the respondent contended that his services were terminated orally without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) and that he may be reinstated in service with full back wages from the date of illegal termination and he may be regularized according to the Government policy. The respondent did not respond to the demand made by the appellant and by an order dated 23.7.1999, the State Government referred the dispute under Section 10 of the Act to the Labour Court. Thereupon the Labour Court passed the award dated 18.7.2006 holding that the appellant had admittedly completed 267 days from 1.6.1988 to 30th April, 1989 and his services were terminated without any notice or notice pay and without payment of retrenchment compensation and the termination was, therefore, in violation of Section 25-F of the Act and the appellant was entitled to be reinstated in his previous post with continuity of service and 50% back wages from the date of demand notice i.e. 30.12.1997.

48. The respondent challenged the award of the labour Court before the High Court of Punjab and Haryana, in writ petition and by order dated 9.12.2008, High Court allowed the said writ petition and set aside the award dated 18.7.2006 of the Labour Court and directed the respondent instead to pay compensation of Rs. 50,000/- to the appellant. Aggrieved by order dated 9.12.2008 of the High Court, the appellant filed appeal before the Apex Court. By placing reliance upon earlier decision rendered by the Apex Court in the case of Harjinder Singh (supra), allowed the appeal and set aside the impugned order dated 9.12.2008 passed by the High Court and directed that the appellant will be reinstated as a daily wager with 50% back wages forthwith.

49. While dealing with the question of discretionary powers of the Labour Court, in para 17 of the decision, Hon'ble Apex Court has observed as under:

"17. Wide discretion is, therefore, vested in the Labour Court while adjudicating an industrial dispute relating to the discharge or dismissal of a workman and if the Labour Court has exercised its jurisdiction in the facts and circumstances of the case to direct reinstatement of a workman with 50% back wages taking into consideration the pleadings of the parties and the evidence on record, the High Court in exercise of its power under Articles 226 and 227 of the Constitution of India will not interfere with the same, except on well settled principles laid down by this Court for a writ of certiorari against an order passed by a court or a tribunal."

22. Thus, in view of the facts and circumstances of the case, discussions made hereinabove and law cited hereinabove, it is established that the workmen under dispute, who were employees of the principal employer i.e. the Factory, were engaged by the Factory through an illegal contract system which is not genuine and mere a camouflage; and all the workmen had worked for more than 240 days in a calendar year preceding the date of their termination; and their services have illegally been terminated on 25.05.2000 on completion of the so called 'illegal contract' by the management of the Ordnance Clothing Factory without following the mandatory provisions of the Section 25 F of the Industrial Disputes Act, 1947. Therefore, I am of the considered opinion that the workman Shri Amar Nath Yadav and others (as provided in the list enclosed with the reference order) are entitled for reinstatement with continuity in service along with 60% of back wages within 08 weeks of publication of the award, failing which; the back wages shall carry simple interest @ 8% per annum. The workmen shall also be entitled for absorption/regularization as observed by Hon'ble Apex Court in 2012 (2) ALJ 325 (supra).

23. The reference under adjudication is answered accordingly.

LUCKNOW.

17th April, 2015

RAKESH KUMAR, Presiding Officer

List of workmen enclosed with the reference No.

L-14012/58/2003-IR(DU) dated: 21.06.2004

1. Amar Nath Yadav
S/o Raj Deo Yadav
Village-Parsadipur, Post-Lutuhi
Distt. Sant Kabir Nagar
2. Shatrudhan Mishra
S/o Ram Murat Mishra
Village-Sitauti
Post-Distt. Basti
3. Ram Kesh S/o Sri Ram
Village-Kidhihiriya, Post-Sikari
Distt. Sant Kabir Nagar
4. Ram Achal S/o Sri Ram Belas
Village-Kidhihiriya, Post-Sikari
Distt. Sant Kabir Nagar
5. Ghanshyam Yadav S/o Udiyraj
Yadav Village-Husa Mau
Post-Munerwa Distt. Basti
6. Phul Chandra S/o Sri Triveni
Village-Kidhihiriya, Post-Sikari
Distt. Sant Kabir Nagar

7. Ram Singh S/o Sri Banvari
Village-Kidhihiriya, Post-Sikari
Distt. Sant Kabir Nagar

8. Om Prakash S/o Sri Ram Lakan
Village-Barparwan Post-Sahuapar,
Distt.-Gorakhpur.

9. Awadh Narayan Singh S/o Sri Ram
Dular Singh Village-Behera Post-
Nasej Thana-Kudra Distt.-
Kaimur (Bhabhua, Bihar)

10. Vinod Singh S/o Sri Ram Dular
Singh Village-Behera Post-Nasej
Thana-Kudra Distt.-Kaimur
(Bhabhua, Bihar)

11. Shiv Murat S/o Jagdeo Village-
Rahunathpur Post-Hariharpur Khajani
Distt.-Gorakhpur

12. Bhuneshwar Singh S/o Sri Ram Pujan
Singh Village-Khairwar Post-Khairwar
Distt-Chapra (Saran, Bihar)

13. Satya Narayan S/o Sri Bideshi Ram
Village-Pursudi Post-Udiyawan Distt-
Azamgarh, U.P.

14. Ramasray Rajbhar S/o Sri Tphani
Rajbhar Village-Bairampur Post-
Ralulpur State Distt-Mau UP

15. Sri Kant S/o Sri Surajbali Village-
Parshurampur Post-Chhaun Gambhirpur
Distt-Azamgarh

16. Ram Hit S/o Sri Ram Karan Ram
Village-Pahilepur Post-Vindra Bazar
Thana-Gambhirpur Distt-Azamgagh

17. Ram Bhagat Mourya S/o Sri Rajvash
Mourya Village-Jangal Thakurhi Koieri
Tal Post-Badeya Bujurg Distt-Deoria

18. Ashok Chuhan S/o Sri Ram Prit Chuhan
Village-Chhitrwa Post Majhgawan
Distt.-Deoria

19. Rajesh Kumar Yadav S/o Sri Moshaphir
Yadav Village-Ram Hardware
(Belhadiya) Moe Tikari Post-Tikari
Thana-Tikari Distt-Gaya (Bihar)

20. Ram Naresh Yadav S/o Sri Ram Baran
Yadav Village-Daulatpur Post-Kavar
Distt.-Gaya (Bihar)

21. Sri Ram Yadav S/o Sri Jangi Yadav
Village-Mahilwar Post-Bhita Bans
Vawan Distt.-Gorakhpur

22. Ram Charan Rajbhar S/o Sri
Vanna Rajbhar Village-Judiyian
Post-Sahjanwa Distt.-Gorakhpur

23. Pradip Rai S/o Sri Ram Vrichha Rai
Village-Pagar Post-Pagar (Kajani)
Distt.-Gorakhpur

24. Ram Darsh Kanoujiya S/o Sri
Lutawan Village-Gayaghat
(Ganpatganj) Distt.-Sant Kabir
Nagar

25. Raj Kumar S/o Sri Kamla Prasad
Village-Beve Post-Chitrahi
(Dumariyaganj) Distt.-Sddratha
Nagar

26. Ram Sajivan S/o Sri Asthoula Post-
Bela-Bilan (Gagha) Distt.
Gorakhpur

27. Shurendra Chuhan S/o Sri
Jagarnath Chuhan Village-Tadwa
Post-Batraoli Pandey Distt.-Deoria

28. Baldesh Chuhan S/o Sri Ram
Shankar Village-Chhitarua Post-
Majhgawan Distt.-Deoria

29. Kamlesh Chuhan S/o Sri Ram
Bihari Chuhan Village-Parsa
Jangal Post-Tivai Distt.-Deoria

30. Ram Surat Yadav S/o Sri Ram
Badan Yadav Village-Gyalpur
Post-Jamuwaha Dekaok Distt.-
Azamgarh

31. Samsher Saroj S/o Sri Ram Nath
Village-Gajor Post-Karouti
Mahnagar Distt.-Azamgarh

32. Ravindra Nath Prajapati S/o Sri Ram
Lakhan Prajapati Village-Dandva
Chatur Post-Pandeypura Distt.-
Gorakhpur

33. Mahesh Chaudhary S/o Sri Ratti
Chaudhary Village-Baddan Shukali
Purwa Post-Munderwa Distt-Basti

34. Chandrashekhar Yadav S/o Sri Ram
Paud Yadav Village-Slahabad Post-
Semardadi, Ghanghta Distt.-Sant Kabir
Nagar

35. Ram Chandra Chaudhary S/o Sri Jai
Ram Village-Slahabad Post-
Semardadi, Ghanghta Distt.-Sant Kabir
Nagar

36. Sarvajeet Mahato S/o Sri Ram Khilavan Mahto Village-Kopa Sonar Patti Post-Kopa Bazar Distt.-Chapra (Bihar)

37. Madho Shah S/o Sri Chandrika Shah Village-Kopa Sonar Patti Post-Kopa Bazar Distt.-Chapra (Bihar)

38. Shiv Charan Verma S/o Sri Ram Khelavan Village-Nawalur Post-Shitalaganj Distt.-Pratapgarh.

39. Anurudh Chaudhary S/o Tilak Ram Village-Huse Mau Post-Munderwa Distt.-Basti

40. Jai Chandra Yadav S/o Sri Kanheiya Lal Yadav Village-Nuse Mau Post-Munderwa Distt.-Basti

41. Purushotam Chaudhary S/o Sri Ram Kumar Chaudhary Vill+Post-Kara Pithiya Distt.-Basti

42. Janardan Chaudhary S/o Sri Dhodhe Vill+Post-Kara Pithiya Distt-Basti

43. Ram Singh Chaudhary S/o Sri Ram Bharat Chaudhary Vill+Post-Kara Pithiya Distt.-Basti

44. Ashok Kumar S/o Late Sri Satiram Village-Kukadipur Post-Dariyapur Nevada Post-Mehnajpur Distt.-Azamgarh.

45. Amarika Prasad S/o Sri Shayamu Village-Parashurampur Post-Chau Gambhirpur Distt-Azamgarh.

46. Udai Bhan Chaudhary S/o Sri Kashi Prasad Chaudhary Village-Cholkhari Post-Padari Distt.-Basti

47. Prem Chandra Chaudhary S/o Sri Shiv Pujan Chaudhary Village-Hause Mau Post-Munderwa Distt.-Basti

48. Ram Jee S/o Sri Ram Samujh Village-Maner Khurd Post-Magul Distt.-Azamgarh.

49. Ram Bachan Yadav S/o Sri Ram Samujh Village-Maner Khurd Post-Magul Distt.-Azamgarh

50. Ram Lalit Chauhan S/o Sri Ram Awadh Village-Badhya Post-Badhyा Bujurg Distt.-Deoria

51. Ramakant S/o Sri Ram Awadh Village-Badhyा Post-Badhyा Bujurg Distt.-Deoria

52. Ramasray Chauhan S/o Sri Kedar Nath Village-Dhaorpani Post-Ranihawa Distt.-Deoria

53. Suraj Chauhan S/o Sri Ram Awadh Village-Dhaorapani Post-Ranihawa Distt.-Deoria

54. Mahendra Lal S/o Sri Ahodhya Prasad Saksena Mo-Eman Jaie Jlal Nagaj near Malakhawali Masjid ke piche (Tarai) Distt.-Shahjhanpur UP.

55. Ram Pratap S/o Sri Godhan Lal Village-Muridapur Post-Pareli Thana-Shahabad Distt.-Hardoi

56. Ashok Kumar Saksena S/o Sri Lala Ram Saksena, Jayaswal Colony Puranpur Distt.-Pilibhit

57. Rashid Khan S/o Sadik Khan Swale Khan ki Tal Mo-Dilejak Distt-Shahjhanpur

58. Sanjay Singh S/o Sri Prati pal Singh Q.No. I/F/63 Double Story Distt-Shahjhanpur

59. Jitendra Pal S/o Sri Maiku Lal Mo-Dilejak Post-Rampur Thana-Sadar Bazar Distt.-Shahjhanpur

60. Mukesh Kumar Saksena S/o Sri Mahesh Chandra Q.No. 27/3 MG Road Cant thenha-Sadar Bazar Distt-Shahjhanpur

61. Moh. khlid S/o Sri Sharaphat Ullah Mo-hathithan Jlal Nagar Near Pali Clinic Thenha Sadar Bazar Distt.-Shahjhanpur

62. Dipak Kumar S/o Sri Hardeo Sidhuapar (Thanvapar) Thanha-Badahalganj Post-Badahalganj Distt.-Gorakpur

63. Sanjay Kumar S/o Sri Banke Lal Link Road Q.No. 17/1 Servant Qatar Factory State Distt.-Shahjhanpur

64. Santosh Kumar S/o Ved Ram Q.No. 38 Single Line Factory State distt.-Shahjhanpur

65. Anil Kumar Mishra S/o V.B. Mishra H.No.-HA/3/I Factory State Distt.-Shahjhanpur

66. Ravi Kumar S/o Lakhan J type H.No.-224/5 Factory State Distt-Shahjhanpur

67. Dinesh Kumar S/o Sri Ayodhi
Prasad Q.No.-17 Link Road Servant
Qatar Factory State-Distt.-
Shahjhanpur

68. Ram Lakhan Chauriya S/o Sri
Ram VrikChh Chauriya Village-
Maharaj Jee Vakaoli Post-Paikoli
Distt.-Deoria

69. Basant Chauhan S/o Sri Ramdhari
Chauhan Village-Gangi Post-Lonkhar
Distt-Deoria

70. Arjun Prasad Yadav S/o Sri Ram Ratan
Yadav C/o Amar Nath Yadav Village-
Parsdipur Post-Lutuhi, Distt.-Sant
Kabir Nagar.

71. Krishna Yadav S/o Sri Shivsharn C/o
Amar Nath Yadav Village-Parsdipur
Post-Lutuhi, Distt. Sant Kabir Nagar.

नई दिल्ली, 5 मई, 2015

का.आ. 992.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सैनिक फार्म बिनागुड़ी छावनी का प्रबंधन के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या सीजीआईटी-16/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-42012/03/2015-आईआर (डीयू)]

पीँ के वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. No. CGIT-16 of 2012) of the Central Government Industrial Tribunal Cum Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Management of Military Farm, Binnaguri Contonment and their workmen, which was received by the Central Government on 01/05/2015.

[No. L-42012/03/2015-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No CGIT-16 of 2012
(Under Section 2A(2) of the I.D. Act, 1947)

Parties: Shri Rajesh Oraon,
Vill, Pradhanpara, P.O. Gairkata,

Dist, Jalpaiguri,
Pin-735101 ...Applicant

-Vs-

Management of Military Farm,
Binnaguri Cantonment,
Dist, Jalpaituri, Pin—735203. ...Opp. Party

Present: Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the : None.

Management

On behalf of the : Mr. Gautam Debnath, Ld. Advocate.
Workmen

State: West Bengal

Date: 17th April, 2015.

AWARD

This is an application filed by one Shri Rajesh Oraon under Section 2A(2) of the Industrial Disputes Act, 1947 against the management of Military Farm challenging that his termination of service by the management is illegal, invalid and void ab-initio and praying for his reinstatement in service with back wages.

2. The Applicant is found absent when the matter is taken up today. It appears from the record that the Applicant is absent since 03.12.2014. Above conduct of the Applicant goes to show that he is not at all interested to proceed with the case further.

In view of the above, instant application is dismissed being not moved.

Dated, Kolkata,

The 17th April, 2015.

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 993.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकाता टेलेफोनेस के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय कोलकाता के पंचाट (संदर्भ संख्या 22/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40011/80/2013-आईआर (डीयू)]

पीँ के वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 993.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (I.D. Ref. No. 22 of 2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation

to the management of the Calcutta Telephones and their workmen, which was received by the Central Government on 01/05/2015.

[No. L-40011/80/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 22 of 2014

Parties: Employers in relation to the management of Calcutta Telephones

AND

Their workmen.

Present : Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the Management : Mr. S.K. Karmakar, Ld. Counsel,

On behalf of the Workmen : None

State: West Bengal Industry : Telephone

Dated: 20th April, 2015.

AWARD

By Order No. L-40011/80/2013-IR(DU) dated 27.02.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the demand of the Calcutta Telephone Contract Labour Union (CTCLU) not to deduct wages from their monthly salary for their Agitational programme during April & May 2013 is justified? if so, what relief the contract workmen are entitled to?"

2. When the case is taken up for hearing today, none appears on behalf of the union though the management is represented by its Ld. Counsel. It appears from the record that the union at whose instance the present reference case has been initiated is absent since 08.09.2014.

3. Considering the facts and circumstances, it appears that the union is not willing to proceed with this case further. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above facts and circumstances, present reference is disposed of by passing a "No Dispute Award".

Dated, Kolkata,
The 20th April, 2015.

Justice DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 994.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, ऑर्डनेन्स फैक्ट्री, जबलपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 85/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-14012/38/98-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/85/99) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Ordnance Factory, Jabalpur and their workmen, which was received by the Central Government on 01/05/2015.

[No. L-14012/38/98-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR NO. CGIT/LC/R/85/99

Shri Rajkamal,
C/o Krishanlal Sonhar,
Maharani Laxmi Ward,
Civil Lines, Katni
Distt. Jabalpur

...Workman

Versus

General Manager,
Ordnance Factory,
Katni, Jabalpur.

...Management

AWARD

(Passed on this 15th day of April 2015)

As per letter dated 4-2-99 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-14012/38/98/IR(DU). The dispute under reference relates to:

"Whether the action of the management of Ordnance Factory in terminating the services of Shri Rajkamal, Supervisor *vide* their order No. 664/1 dated 28-6-97 is legal and justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim. Case of workman is that he was dismissed from service in pursuance of an enquiry held against him. Enquiry conducted against him is illegal. That chargesheet supplied to him is vague incapable of giving reply. Enquiry Officer was biased. Enquiry was not conducted following principles of natural justice. Finding of Enquiry Officer are perverse and contrary to record. Workman was not supplied relevant documents despite his request. On such ground, workman prays for his reinstatement with consequential benefits.

3. IIInd party filed Written Statement at Page 3/1 to 3/3. Case of IIInd party management is that Ist party workman was caught with Govt property in Defence Production Unit (Metallic Defence store) weighing 2.4 Kg. hidden in his undergarment. That during search carried by Defence Security Personnel on 14-9-95 at maingate, Government Property was recovered. Workman was trying to go out of premises with stolen material. It is further submitted that during search operations on question by Security Personnel, Workman was asked to go to Security Office. He started shouting and used unparliamentary language. After the workman was taken to security office, statement was recorded by Duty Officer. The seized material was identified by Head of Stores Department. The material was weighed and sealed in presence of duty officer.

4. It is further contented that chargesheet was issued to workman under Rule 14 of CCS Rules, 1965. The allegations against workman were of attempt of theft using unparliamentary language. Workman denied charges. Enquiry was conducted against workman. Enquiry Officer submitted report on 28-4-97 holding charge of attempt of theft of Government property proved. The finding of Enquiry Officer are based on evidence. The representation of workman dated 14-6-97 was found without merit. Punishment of dismissal was imposed against workman on 28-6-97. It is reiterated that the findings of Enquiry Officer are based on evidence. Enquiry was conducted properly. The appeal preferred by workman was dismissed.

5. As per order dated 27-9-2013, enquiry conducted against workman was found proper and legal. Considering pleadings on record, the points which arise for may consideration and determination are as under. My Findings are recorded against each of them for the reasons as below:—

(i) Whether the misconduct In Affirmative
alleged against workman
is proved from evidence in
Enquiry proceedings?

(ii) Whether the punishment In Affirmative
of dismissal imposed
against workman is
proper and legal?

(iii) If not, what relief the Workman is not
workman is entitled to?" entitled to any relief.

REASONS

6. As order dated 27-9-2013, enquiry conducted against workman is found legal. Whether charges against workman are proved or not and quantum of punishment is legal remains for consideration. W.r.t. Ist point, evidence in Enquiry Proceedings needs to be considered.

Learned counsel for workman Shri R.C. Shrivstava advanced argument that seizure of the Government Property was not prepared to connect workman with the guilt. That two other charges were also held not proved. Rigorous search of workman was taken in search now. No witness is examined. The evidence in Enquiry Proceedings does not connect CSE with admitted theft. The punishment of dismissal from service is harsh as it amounts to civil death.

8. The record of Enquiry proceedings is produced. Evidence of management's witness is devoted on the point of legality of enquiry conducted against workman. Learned counsel for IIInd party has submitted written notes of argument narrating the factual matrix. The record of enquiry proceedings shows statements of management witness Shri C.K. Mukhopadhyay, witness No. 2 V.K. Chouksey, MW-3 Ompal Singh, MW-4 Shri Prem Ballabh are recorded in detail. All the witnesses of management were cross-examined extensively. As per evidence of management's witnesses, search of workman was taken in the search room by Ompal Singh. The evidence of other witnesses is consistent on the point of personal search of workman was taken and after the room was opened, the material was found on table. MW-2 Shri V.K. Chouksey in his evidence says rigorous search of workman was taken by Ompal Singh. Shri Rajkumar was asked to carry the bundles to Security Office. He denied and stated that bundles were not recovered from these persons. Rather these were kept in the room. After that the statement and statement of Prem Vallabh were recorded. The weight was found approximately 3 Kg. similarly evidence is given by Witness No. 2 management witness Ompal Singh in his statement says Rajkumar was taken to the search room and he was asked to put off his clothes. Search was taken. At the time of search, 3 bundles of wife was found beneath his underwear. His evidence on the point is not shattered in cross-examination. In reply to Question by Presenting Officer, he says he did not tell anything. He had no rifle with him at the time of incident. He further says that after material was found with workman, he reported about it to Shri V.K. Chouksey, Duty Officer. In his cross-examination,

Shri Ompal Singh says at the time of Prem Vallabh was deputed in metal detector room and he was no duty in search room, he was deputed to take search of workman as Prem Vallabh expressed inability to take his search. MW-3 in his further cross-examination says that some register is being used for both purpose. MW-3 in his further cross-examination says that only Shri Raj Kumar was trying to take out the material. He did not know the procedure and details of it. In reply to question- how many other persons were in rigorous search, the management's witness says none else. The evidence of Witness No. 4 Prem Vallabh corroborates his evidence. The evidence of witness Shri M.P. Tiwari is devoted on the point he had seen BSE persons taking Rajkumar out of search room holding his hand. He claimed ignorance about any conversation by workman. His evidence on above point is not challenged in his cross examination.

9. The argument advanced by Shri R.C. Shrivastava for workman that as seizure memo was not prepared, workman is not connected with incident cannot be accepted. Only witnesses have narrated that workman was taken to search room and Ompal Singh in his evidence says on search of workman, material were found weighing approximately 3 kg the scope of judicial review under Section 11-A of ID Act is limited whether the findings of Enquiry Officer are not supported by any evidence and as such persevere. In present case, all the witnesses have seen workman taken to search room and Ompal Says that he had taken personal search of the workman and found the material. The evidence cannot be re-appreciated. The burden of proof, the matters of DE is on the principles of probabilitates and not of the degree of proof beyond reasonable doubt. Considering the evidence of witnesses of management discussed above, the findings of enquiry officer cannot be said perverse. The evidence of management's witness proves charge of attempt to theft of Government property by workman. For above reasons, I record my finding in Point No. 1 in Affirmative.

10. Point No. 2- In view of my finding in Point No. 1, charge against workman is proved from evidence in Enquiry Proceedings, question remains for consideration is whether the punishment of dismissal imposed against workman is proper and legal. The evidence discussed above shows that Government Property was bundles approximately weighing 3 kg were admitted to be stolen by workman. the charge is proved. The act attempting to commit theft of Government property working with IIInd Party Ordnance Factory certainly is a misconduct of serious nature. Therefore the punishment of dismissal imposed against workman cannot be said excessive, disproportionate, punishment of dismissal imposed against workman appears proper, reasonable no interference is justified. for above reasons, I record my finding in Point No. 2 in Affirmative.

11. In the result, award is passed as under:—

- (1) The action of the management of Ordnance Factory in terminating the services of Shri Rajkamal, Supervisor *vide* their order No. 664/1 dated 28-6-97 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 995.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, गवर्नमेंट अफीम अल्कलॉइड वर्क्स, मंसूर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/302/97) को प्रकाशित करती है, जो केंद्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-42012/151/96-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 995.—In pursuance of Section 17 of the Industrial Disputes Act, 1947(14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/ 302/97) of the Central Government Industrial Tribunal Cum Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Govt Afeem & Alkaloid Works, Mansour and their workman, which was received by the Central Government on 01/05/2015.

[No. L-42012/151/96-IR (DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/302/97

Shri Purushottam,
S/o Shri Jagdishchandra Mangal,
86-Hudco colony,
Neemuch,
Distt. Mandsour

...Workman/Union

Versus

The General Manager,
Govt. Afeem & Alkaloid Works
Neemuch,
Distt. Mansour

... Management

AWARD

Passed on this 13th day of April, 2015

1. As per letter dated 8-23/10/97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-42012/151/96-IR(DU). The dispute under reference relates to:

'Whether the action of the General Manager, Govt. Afeem & Alkaloid Works, Neemuch, Distt. Mandsaur (MP) in terminating the services of Shri Purushottam, S/o Shri Jagdish Chandra Mangal, Ex. Lower Division Clerk w.e.f. 10-4-95 is legal and justified? If not, to what relief the workman is entitled for?

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at page 3/1/ to 3/6. Case of workman is that he was intermittently working as LDC on 13-4-77 to 31-8-77, 1-9-77 to 7-10-77, 1-5-78 to 28-12-78, 11-1-79 to 18-12-80 with IIInd party. That termination of his service from 18-12-80 was challenged in R/2/83 before this Tribunal. The award was passed on 12-11-1984 in favour of Ist party workman for reinstatement with backwages. Said award was challenged before Hon'ble High Court Indore bench. Workman was reinstated from 6-2-87. Writ Petition was dismissed and review applications were also dismissed.

3. On 5-1-94, chargesheet was issued by General Manager of IIInd party alleging unauthorized absence from duty, habitual absence from duty etc. He submitted reply to chargesheet on 15-2-94. Shri S.L. Arya was appointed as Presenting Officer, Mr. A. Ajiz was appointed as Enquiry Officer. Later on Shri B.R. Verma was appointed as Enquiry Officer in place of Mr. Ajiz. It is submitted that workman had requested chargesheet in Hindi. Management refused to supply chargesheet in Hindi. The enquiry was initiated. Enquiry was fixed on various dates. Enquiry could not be conducted. Statement of any witness was not recorded in Enquiry Proceedings. Workman had contented that his services are not covered by Central Service Rules. The enquiry was stayed on 18-1-95, workman received letter claiming that management was not bound to follow particular rules. the date of enquiry was not informed. It is reiterated that workman was not given opportunity for his defence. His services were terminated from 10-04-95. Workman submits that charges were not proved from evidence of any management's witnesses. Dismissal of workman is illegal. Workman prays for reinstatement with backwages.

4. IIInd party submitted Written Statement at page 8/1 to 8/3 opposing claim of workman in para-1 of Written Statement, IIInd party has admitted intermittent employment of workman on contractual/temporary basis. IIInd party

contented that workman never appointed on regular basis following prescribed procedure. The Appointing Authority of LDC is Dy. Commissioner, Narcotics. Workman was not issued appointment letter by said authority. IIInd party has admitted earlier dispute referred by order dated 19-12-90. The Tribunal had directed management to reinstate workman in service. Award was challenged in W.P. 310/85. Said petition was dismissed. On 22-6-95, the LPA filed by management was also dismissed.

5. IIInd party submits that workman is habitual of remaining absent without prior intimation or getting leave sanctioned. Workman was issued show cause notice on 5-1-94. He denied allegation against him, management appointed Enquiry Officer. Enquiry Officer submitted his report on 16-3-95 holding charges against workman are proved. It is reiterated that workman was asked to submit his representation against report of Enquiry Officer. The Disciplinary Authority General Manager did not find substance in the reply submitted by workman, he was removed from service on 10-4-95. Action of management is legal. Enquiry conducted against workman is legal. It does not suffer from any infirmity. On such ground, IIInd party prays for rejection of claim of workman.

6. As per order dated 14-6-2013, enquiry conducted against workman is vitiated. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the In Negative
General Manager, Govt.
Afeem & Alkaloid Works,
Neemuch,
Distt. Mandsaur (MP) in
terminating the services
of Shri Purushottam, S/o
Shri Jagdish Chandra Mangal,
Ex. Lower Division Clerk w.e.f.
10-4-95 is legal and justified?

(ii) If not, what relief the As per final order,
workman is entitled?"

REASONS

7. Point No. 1 As per order dated 14-6-2013, enquiry is found vitiated, the case was fixed for evidence of management on 19-11-2013. Management did not adduce any evidence to prove charges alleged against Workman. Workman filed affidavit of his evidence on 6-5-2014 supporting his contentions in statement of claim. Workman has stated that charges alleged against him were baseless. He had not committed any misconduct. Since termination of his service, he was unemployed, he is not working at other place. It is unfortunate that even after enquiry again

workman found vitiated. Management of IIInd party did not take care of the matter. The counsel for IIInd party remained absent. Workman was not cross examined. His evidence remained unchallenged. To conclude, after enquiry is found vitiated, management of IIInd party has not taken care to adduce evidence to prove charges alleged against workman. Therefore order of removal against workman is illegal. Therefore, I record my finding in point No. 1 in Negative.

8. Point No. 2—workman in his affidavit to evidence has stated that he is unemployed, his evidence remained unchallenged. Management failed to adduce evidence. I find no reason to deny reinstatement of workman with backwages when charges are not proved and there is no evidence that workman is in gainful employment after termination of his service therefore workman is entitled for his reinstatement with back wages. Accordingly, I record my finding in Point No. 2.

9. In the result, award is passed as under:—

- (1) The action of the General Manager, Govt. Afeem & Alkaloid Works, Neemuch, Distt. Mandsaur (MP) in terminating the service of Shri Purshottam, S/o Shri Jagdish Chandra Mangal, Ex. Lower Division Clerk w.e.f. 10-4-95 is not proper.
- (2) IIInd party is directed to reinstate workman with continuity of service and full back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 996.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जनरल मैनेजर, बैंक नोट प्रेस के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/73/05) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-16012/1/2005-आईआर (डीयू)]
पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 996.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/73/05) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the General Manager, Bank Note Press and their workman, which was received by the Central Government on 01/05/2015.

[No. L-16012/1/2005-IR(DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/73/05

Smt. Sumitra Bohare,

Manoj Bohare,

Jitendra Bohare &

Ku. Sheela Bohare-LRs of

Shri Ramchandra Bohare,

H.No. 70, Subhash Marg, Kannod,

Distt. Dewas,

Dewas MP

... Workman

Versus

General Manager,

Bank Note Press,

Dewas (MP)

... Management

AWARD

Passed on this 15th day of April, 2015

1. As per letter dated 15-7-05 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-16012/1/2005-IR (DU). The dispute under reference relates to:—

"Whether the action of the management of General Manager, Bank Note Press, Dewas in terminating the services of Shri Ramchandra Bohare w.e.f. 15-3-83 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Pages 2/1 to 2/3. Case of workman is that he was appointed as temporary mazdoor by IIInd party on 27-7-79 on daily wages. His services were regularised on 23.11.79 in Pay Scale of Rs. 196-3-220-EB-272. His services were confirmed on probation of one year as per order dated 24-11-79. That workman had participated in National Family Planning Programme on 18-6-81. Thereafter he was not keeping good health. He was absent from duty. Workman has shown his absence from duty, LWP, HPL during 1980 to 1983. Workman was served one months notice on 8-3-83, his services were terminated paying salary for period found less to one month notice. Workman had received card from Employment Exchange office for his employment. Though workman was allowed to work during 9-2-89 to 14-5-89, he was not paid wages. He had filed original application 326/99 before CAT, Jabalpur which was decided on 21-1-03. Workman was allowed liberty to approach competent forum.

3. Workman submits that his services were orally terminated. Any chargesheet was not issued to him. The

CCS CS Rules 1965 are deliberately violated, terminating his services without hearing. Workman reiterates his services are terminated in violation of Section 25-F of ID Act as not paid 3 months pay, retirement allowance are not paid to him. Though workman worked for 3 months in IIInd party, he was not paid wages for said period. Services were orally terminated. On such ground, workman prays for his reinstatement with backwages.

4. IIInd party filed Written statement at Pages 6/1 to 6/5 opposing claim of workman. IIInd party did not dispute appointment on daily wages of Ist party workman from 24-9-79. The condition of appointment was services could be terminated by both side giving one months notice. Workman was remaining unauthorisely absent. Chargesheet was issued to him on 1-9-82. Increment of workman was withheld for 3 months. Workman did not show improvement in his conduct. Appointment Authority invoking Rule 5(1) of CCS temporary services dismissed workman, one months pay was paid to the workman. The appeal filed by workman challenging order of his dismissal was also dismissed on 15-4-83.

5. A drive was initiated for filling post of SC. Workman was called for interview on 19-7-89. 32 candidates were interviewed. The performance of workman was found lower than other candidates therefore he could not be selected. The workman had filed Writ Petition 326/99 challenging his dismissal. As per order dated 22-7-99, Hon'ble High Court had directed to consider representation of workman after workman submits his grievances. Workman did not submit his application rather workman filed review application against said order. It is reiterated that workman was appointed on temporary basis. As workman was remaining unauthorisedly absence, his services were terminated under CCS Temporary Rule 5(1). The Opportunity was given to workman. Though he was interviewed, his performance was found low therefore workman could not be appointed. Above contentions are reiterated by IIInd party. It is submitted that workman is not entitled to any relief.

6. Workman filed rejoinder at Pages 10.4 to 10/7 reiterating his contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

"(i) Whether the action of the management of General Manager, Bank Note Press, Dewas in terminating the services of Shri Ramchandra Bohare w.e.f. 15-3-83 is justified? In Negative

(ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

8. The workman died during pendency of reference. His LRs Smt. Sumitra Bohare, Manoj Bohare, Jitendra Bohare & Ku. Sheela Bohare are allowed to be brought on record. In support of his claim, workman filed affidavit of his evidence supporting his claim that he was appointed as tempoary labour on 10-7-79. His services were regularised by order dated 23-11-79 on Pay Scale of Rs. 196 from 30-11-79, he was allowed benefit of Pay Scale of Rs. 196-3-220-232. The memo prior to 30-4-79 relating to strike was withdrawn. He was operated of tubectomy (Family Planning) on 8-9-81, allowing increment Rs. 3/-. He was served with chargesheet on 1-9-82, alleging unauthorized absence from duty. The chargesheet was replied by him denying allegations. By order dated 15-10-82, his increment was stopped for 3 months without cumulative effect. Workman has also narrated his absence from duty claiming that he was granted leave of different types including commuted leave. Workman in his cross-examination says he was appointed on 10-7-79 though he was called on work from 5-7-79. As per order dated 30-9-79, he was appointed on probation. On 9-2-82, chargesheet was issued to him. Any chargesheet was not issued to him before termination of his service. His 3 increments were withheld for 3 months on chargesheet issued earlier to him, the show cause notice issued to him was in respect of strike. He was not served with any notice.

9. Management's witness Shri K.K. Pandit filed detailed affidavit supporting contentions of management that in offer of appointment, the light of terminating service of workman paying one months salary in lieu of notice. Ist party workman is tempoary employee. The chargesheet was issued to him on 16-8-82, the increment of workman was withheld for 3 months. Workman did not show any improvement. The services of workman were terminated under Rule 5(1) of Temporary Service Rules 1965 from 15-3-83. Workman had filed original application 326/99 before CAT. Said petition was dismissed with liberty to the workman to approach proper forum. Management's witness in his cross-examination denies that workman was sanctioned leave. However management's witness agrees that no DE was held against workman before terminating his services. Management's witness denies that services of workman are terminated for Union activities. Management's witness admits that Appellate Authority remanded the matter. He further explains that direction was given by RLC.

10. Documentary evidence on record Exhibit M-1 is copy of order dated 23-11-79 workman was appointed tempoary as labour. Condition of appointment are given in para-2 that the services of workman were terminable giving one months notice or salary in leiu of notice. Annexure R-2

though admitted has not been exhibited. Order dated 10-10-82 was passed withholding increment of 1st party workman for 3 months. R-3 is order of dismissal dated 15-3-83. Identical documents are produced by workman also. Exhibit W-1 is appointment order dated 30-6-79 as daily wage employer. Exhibit W-2 is also order of appointment on daily wages Rs. 4/- per day. Exhibit W-3 is copy of appointment order dated 23-11-79. Service of workman was terminable giving one months notice. Exhibit W-4 is workman along with others were appointed on probation period. The period of probation is not mentioned in the order. Exhibit W-5 is article of charges relating to unauthorized absence of workman. Exhibit W-6 is reply given by workman that he could not attend duties as he was suffering from illness. Exhibit W-7 is copy of order withholding increment for 3 months. Exhibit W-8 is notice dated 8-3-83 for termination of service of workman after one month. However without waiting for one month period, the order of termination was issued on 15-3-83 Exhibit W-9. In order Exhibit W-9 working days of workman is enclosed. Exhibit W-10 is order dated 15-3-83 rejecting representation of workman. Exhibit W-11 is memorandum dated 1-6-83. That matter pertaining to workman was considered with sympathy. As per Exhibit W-2, workman was informed, his services were terminated for unauthorized absence. As per Exhibit W-13, the representation of workman was rejected as per Exhibit W-14, appeal of workman was dismissed. Exhibit W-15 is copy of notice issued by ALC. Exhibit W-16 is reply given by IIInd party.

11. Documents on record clearly shows that workman was appointed on probation without mentioning period of probation. When chargesheet was issued to workman, his increment was stopped for 3 months without cumulative effect on the basis of chargesheet issued earlier. Before terminating his service, workman was not served with chargesheet, no enquiry was conducted against him under the guys that workman was in temporary service. His services are terminated under CCS Rule 5(c) of Temporary Service. When workman is granted increment, his increment was withheld, the contention of management that workman was in temporary service cannot be accepted. Earlier the workman was treated as regular employee and chargesheet was issued to him. IIInd party has admitted that workman was not temporary employee therefore chargesheet was issued to him. Workman was appointed in June 1979. His services are terminated on 15-3-83. The payment of one months pay is not supported by cogent evidence. The reasons for termination of workman are not given. For the reasons discussed above, action of management of IIInd party cannot be said legal. Therefore I record my finding in Point No. 1 in Negative.

12. Point No. 2- the termination of services of workman under Rule 5(c) CCS Temporary Service Rules is found legal. Workman died during pendency. He had completed service of about 4 years. His LRs are brought

on record, workman cannot be reinstated. Considering the length of service of workman rendered, reasonable compensation to his LRs would be appropriate. In my considered view considering facts of the case, compensation Rs. One Lakh would be reasonable. Accordingly I record my finding in Point No. 2.

13. In the result, award is passed as under:—

- (1) The action of the management of General Manager, Bank Note Press, Dewas in terminating the services of Shri Ramchandra Bohare w.e.f. 15-3-83 is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. One Lakh to the widow of the deceased workman Smt. Sumitra Bohare within 30 days from the date of publication of this Award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 997.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/59/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40012/111/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 997.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/59/2004) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01/05/2015.

[No. L-40012/111/2003-IR(DU)]

P.K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/59/04

Shri L.D. Sharma, Secretary,
Akhil Bhartiya Doorsanchar Karamchari Sangh Line

Staff & Class IV,
O/o Sub Division Telephone Officer,
Madamahal Premnagar,
Jabalpur (MP) ...Workman/Union

Versus

Chief General Manager,
Telecom Bhawan,
Hoshangabad Road,
Bhopal (MP) ...Management

AWARD

Passed on this 16th day of April 2015

As per letter dated 5-5-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/111/2003-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Bharat Lal S/o Shri Amarnath and other 116 casual workers (list enclosed) and not regularizing their service is legal? If not, to what relief the workmen are entitled to?

2. After receiving reference, notices were issued to the parties. The case of Ist party Union Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV submitted statement of claim at Page 2/1 to 2/3. Case of Ist party Union is that the workman related to the dispute Bharat Lal and 116 others were employed as casual labour by the management of IIInd party. Those workers worked more than 240 days in calendar year preceding their termination. The Union challenged termination of services of those workmen. Union contented that all those workmen continuously worked for more than 240 days in calendar year preceding their termination. Those workers are deemed to be in continuous service under Section 25B of ID Act. That section 25-F, H of ID Act were not complied by IIInd party, the workers were not paid retrenchment compensation prior to termination of their service. The termination of service is illegal. Principles of last come first go was not followed while terminating services by management, permission under Section 25N of ID Act was not obtained by the management. Instead of terminating services of concerned workman, they should have been regularised as per scheme framed by the management in pursuance of directions given by Hon'ble Apex Court.

3. By amendment, Union has further pleaded that the Supreme Court had given directions in case of Daily Rated Casual Labour Employed under P&T Department versus Union of India and other issued a direction to the government to frame a scheme for giving temporary status to the casual employees working in the department and pursuant of the said judgement the P&T department framed

the scheme for purpose of giving temporary status to the workmen. In said scheme there is a provision for regularization of casual labour who put more than one year service before 30-3-85 thereafter the Telecommunication department framed another scheme and worked out cases for absorption of casual labour who have been confirmed temporary status from 25-6-93 i.e. in respect of person engaged after 30-3-85 and prior to 22-6-88. That CAT Jabalpur had allowed temporary status to the casual employees who were working along with the concerned workmen in the reference. The action of IIInd party not giving temporary status to workman concerned with dispute is arbitrary, illegal. Those workman should have been regularised by IIInd party. On such ground, Union prays that reference be answered in its favour.

4. IIInd party filed Written Statement at Page 9/1 to 9/9 opposing claim of Union. IIInd party raised objection that Shri L.D. Sharma President of Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV is not competent to raise dispute as Ist party Union is not recognized Union. Ist party claims that he is labour/office bearer of the employees Association. BSNL was established in the year 2000. The staff was absorbed in BSNL as per the option given by the employees. The meeting with Federation/association of Union was called on 27-2-01 by management in Chairmanship of MP BSNL. On 4-10-02, the BSNL has declared the recognized Union to NFTE BSNL. After 2 years, NFTE BSNL membership was verified and BSNL Employees Union was found eligible Union. It is reiterated that Union has no locus standi to raise the dispute. It is further contended that Ist party Association challenged order of retrenchment of workers for violation of Section 25 F, H of ID Act contending management not paid retrenchment compensation to the workers shown in the enclosed list. It is alleged that their termination is void. IIInd party submits that contentions of Union are not tenable. The Telecom department was merged in BSNL. Ist party Union has not carried the amendments. His claims suffers from non-joinder of parties. It is further contented that MP Telecom Circle having largest areas in the country, the telephonic facilities were less in comparison to other rural areas. In order to complete the project works, casual labours were engaged by Telecom Department, now called BSNL at various places. Those casual workers were engaged on daily payment basis for specific work. The work was discontinued after completion of projects. Workman appearing in the list submitted with statement of claim were also engaged for works as per requirements and that is for specific work on daily wages. Workman concerned with dispute are not entitled for reinstatement.

5. Ist party Association has not supplied details of the workman related to the nature of work under which authority they were working, the duration of work, the period of work therefore the claim of Ist party is not tenable.

6. IIInd party submits that the penal of list attached with statement of claim shows workman worked during 1977 to 1990. After 1990, they were not enrolled on daily wages casual labour. They were engaged for specific work as per requirement. Those who have not completed 240 days continuous service during any of the year. The dispute is raised after long lapse of time. Claim is highly belated and barred by time is not tenable. The Association failed to establish whether worker's names appear in the list attached with statement of claim are still unemployed or without any job. It is submitted that workman retrenched by IIInd party were paid compensation. Management submits that sufficient opportunity was given to Ist party Association to supply particulars in the interest of workman.

7. IIInd party further submits that as per directions issued by Supreme Court, casual labour grant of temporary status and regularisation scheme 1989 was introduced. (a) The workers engaged prior to 30-3-85, (b) continuing as casual worker as on 7-11-89, (c) have completed 240 days in a year. The benefit of said scheme was extended to casual workers engaged in project and electrification works on the condition that — (a) they have been engaged between 31-3-85 to 22-6-88, (b) they are continuing as on the date of respective orders i.e. 25-6-93, (c) they have not remained absent for more than 365 days w.e.f. the issuance of the respective orders. IIInd party further submits that the discontinuation of workmen is covered under Section 2(oo)(bb) of ID Act and the same does not amount to retrenchment.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) whether the action of the In Affirmative management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Bharat Lal S/o Shri Amarnath and other 116 casual workers (list enclosed) and not regularizing their service is legal?
- (ii) If not, what relief the Workmen are not workman is entitled to?" entitled to any relief.

REASONS

9. The terms of reference relates to legality of termination of Bharat Lal S/o Amarnath and 116 casual labours name shown in list enclosed with order of reference. Ist party Union is challenging termination of those casual labours claiming regularization as per the scheme framed by the department. Parties are not in dispute about scheme

framed as per directions given by the Supreme Court in case daily rated casual labours employed in P&T Dett. Versus Union of India. There is serious dispute between parties about completion of 240 days continuous service by all those casual labours and violation of Section 25-F of ID Act. The parties are also in dispute about benefit of Casual Labour Regularisation Scheme 1989. The benefit of said scheme could be extended to casual labours engaged prior to 30-3-85 continuing as casual workers on 7-11-89 and completing 240 days in a year. The affidavit are filed by IIInd party of Shri S.A. Khan, Arun Mehto, J.P. Thakur, S.K. Singh, R.K. Tiwari, A.K. Yadav, Manoj Kumar, N.K. Mitra, Hamit Khan, A.N. Singh, M.K. Jharia, B.S. Sakarwar, Johrilal Satya, N.D. Sharma. That documents related to casual workers are not available. As per rules in Appendix V, the documents like muster rolls are preserved for period of 5 years.

10. Identical affidavit of evidence are filed by workmen Shri Arun Tiwari, B.L. Verma, Sohanlal, Manoj Kapoor. All of them are cross-examined. Shri Arun Tiwari has stated that he was engaged as casual labour from 1986 to 1990. He worked more than 240 days. His services were terminated without paying retrenchment compensation. In his further cross-examination, he says his name was not sponsored through Employment Exchange. He was not orally interviewed. He was working as per muster roll. He was looking the work of telephone fault. He had not received any training. He was receiving pay for his working days. He was not member of All India Telephone Employees Union. He worked from May 1986 to 1990. Sunday was holiday, Saturday was working day. He was not availing leave. He denied suggestion that he not completed 240 days during any of the year. Shri B.L. Verma has deposed statement of claim is filed in English not in Hindi. It was explained by counsel in Hindi. his name was registered in Employment Exchange. He did not receive any letter from Employment Exchange. Once he was orally examined, he was working as per muster roll. Appointment letter was not given to him. He was engaged at different places after the work was completed at Rewa, Chhattarpur, Katni, Jabalpur. He denies that he was engaged for specific work. He denies that he had not completed 240 days continuous service. Shri Sohanlal says he was engaged in 1986 to 1990. He has also denied suggestion that he not completed 240 days continuous service. He claims ignorance whether for same labours, Union filed case before this Tribunal was dismissed. Shri Manoj Kumar has also denied suggestion that he not completed 240 days continuous service. In his further cross-examination, he says he knows only one Union, he claims ignorance whether the Union is recognized or not? He reiterates that he was working 365 days in a year. He had received letter from Employment Exchange but it is not produced in the case.

11. Affidavit of Riyaz Ahmed, Ghansham Pasi, Aftab Kosa, Ramsingh, Keshav Das, Ramadhar, Rubilal are filed

in the case but they were not available for cross-examination. Their evidence cannot be considered. Management filed affidavit of evidence of Shri D.S. Thakur supporting its contentions. In para-4 of his affidavit, he says that workman shown in the list never worked for department. That after 1990, those casual labours were not engaged. He refers to statement of claim that workers were claiming to have been engaged as casual labors during 1977 to 1990. The dispute is raised after long lapse of time is barred. In para-7 of his affidavit, the department had prepared scheme for regularization of casual labours engaged prior to 31-3-85 continuing as casual labours as on 7-11-89 completing 240 days in any year. Management's witness in his cross-examination says that the workman was paid wages for working days in the department. In 1990, workman left work. There was no need to give notice. He claims ignorance whether wages were paid monthly or weekly. The benefit of scheme for regularization of temporary employees was given to the employees who were fulfilling the conditions.

12. The evidence of Ist party workman about completion of 240 days continuous service by them is not supported by any document. As discussed above, management has filed affidavit that the documents are not available. The dispute pertains to the year 1990. The dispute is referred as per order dated 5-5-04 i.e. after 14 years. Management could not produce the documents after such long lapse of time. Any of the office bearer of Union is not examined as witness. All witnesses of Ist party have given evidence in their individual capacity. Various applications were filed by IIInd party requesting details about identity of workman, the period of work etc. The details submitted by Ist party Union is not substantiated by evidence of any of the witnesses.

13. Learned counsel for Ist party Shri R.C. Shrivastava produced copy of judgement by CAT Jabalpur in OA 411/90 and others. From reading of said judgment, it is clear that most of the labours who were appointed have completed more than 240 days and chart have been filed in each case showing the actual days of work performed by each of the petitioner. These charts are not disputed by the department. The position in present case is different. The parties are in serious dispute about completion 240 days continuous service by all 117 casual labours. In Para-6 the working days of petitioner are shown during the year 1985 to 1990.

In present case, there is no cogent evidence about completion of 240 days service by all those casual labours except their worn affidavit. Therefore common judgment by CAT cannot be followed even for persuasive purpose.

14. Learned counsel for Ist party Shri R.C. Shrivastava relies on ration held in catin of cases—

In case of Employer versus President, Rajhara Colliery Mazdoor Sangh reported in 2014-II-LLJ-333. Their Lordship

of Jharkhand High Court dealing with regularization of casual labours and the question whether Tribunal Labour Court have power to issue directions for creation of post for regularization of workmen.

In para-22 of the judgment, it was observed that WW-1 and WW-2 have consistently stated that the casual wagon loaders have individually completed 240 days in a calendar year. To substantiate the oral evidence, on behalf of the workmen, the statement prepared by the Union as Exhibit W-3 in respect of production in the colliery and number of days and attendance put in per head was produced. Workmen have discharged the burden cast upon them establishing that the workmen worked for more than 240 days.

In present case, the evidence of witnesses of Ist party is not supported by any documents like Exhibit W-3 in above cited case. Therefore the ratio cannot be applied to present case at hand.

In case of H.D. Singh versus Reserve Bank of India and other reported in 1985 4(SCC)201. Their Lordship of the court dealing with Section 25(B)(2)(a)(ii) had actual working for not less than 240 days in a year. Employer's failure to produce attendance register to controvert workman's claim. On facts held workman's claim acceptable.

In present case, the dispute relates to working of casual employees during the period 1977 to 1990. The dispute is referred in 2004. The documents relating to work of casual labours are not available. The ratio held in above cited case cannot be applied to case at hand.

In case between BSNL versus Bhurimal reported in 2014(14o)FLR 901. Their Lordship dealing with the question of reinstatement with backwages considering the facts workman had worked almost 15 years as daily wage lineman, management could not prove any agreement with the contractor to prove that he was a contract employee. The finding record by CGITS upheld by the single Judge that respondent directly worked under the appellant for almost 15 years as a lineman on daily wage basis. Their Lordship held termination rightly held to be legal in view of ID Act. Compensation Rs. 3 Lakh was directed to be paid.

The facts of present case are not comparable. The evidencke of witnesses of Ist party shows they were working as casual labours around 1985 to 1990. Their evidence is not supported by any documents.

In case between Surendra Singh versus Executive Engineer HPSEB Division Shimla reported in 2013(138)FLR 1048. Their Lordship of Himachal Pradesh held rules of evidence in its strict sense not required to be applied in a proceeding before the Labour Court which as a matter of fact conducts an inquiry summarily under the ID Act.

In case of Buchbai versus Nagpur University reported in AIR(83)1946 Nagpur 377. Their Lordship held statements recorded on orders passed by Income Tax

Officers are public documents. Certified copies thereof are admissible in evidence. The mere fact that the document is produced is not sufficient for its rejection.

Considering facts and evidence in the case, ratio held in the case has no bearing to the controversy between parties.

In case of Gautam Sarup versus Leela Jetly reported in 2008(4) MPLJ 113. Their Lordship held the admission made by a party to the list is admissible against him *proprio vigore*. A categorical admission cannot be resiled from but in a given case, it may be explained or clarified.

in present case, IIInd party has not admitted completion of 240 days continuous service rather it is case of idspite between parties therefore the ratio cannot be applied to present case.

In case of Sudarshan Rajpoor versus UP State Road Transport Corporation reported in 2015(144)FLR-7 their Lordship considering finding of fact recorded by the Labour Court that termination of the appellant was illegal. Finding of Labour Court that appellant was not appointed on contract basis as Driver. Work extracted for several years of permanent nature alleged employment on contract basis wholly impermissible and amounts to unfair labour practice as defined under Section 2(ra) of ID Act, 1947.

The ratio held in the case cannot be applied to present case as the evidence of Ist party witnesses is that they were engaged as casual labours on daily wages. The period of their working as casual labour is not established by cogent evidence. The self serving evidence of workman is different to be relied when dispute is raised after long lapse of time rather the legal position is settled that the disputes raised after 7 years cannot be said proper.

15. Though President of Union has raised dispute, any of the office bearer of the Union has not appeared as witness to support claim of all casual labours related to present dispute. That dispute is raised after lapse of about 14 years. The documents were not available with IIInd party about working of all those casual labours. For lapse of long time, dispute is raised. IIInd party cannot be blamed. The claim of Ist party Union for regularization of casual labours or completion of 240 days continuous service preceding 12 months termination of services cannot be accepted. Even details of all those casual labours, place and period of their working is not supported by cogent evidence by the Ist party Union therefore I record my finding in Point No. 1 in Affirmative.

16. In the result, award is passed as under:—

- The action of the management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Bharat Lal S/o Shri Amarnath and other 116 casual workers and not regularizing their service is proper and legal.

(2) Workmen are not entitled to any relief. Parties to bear their respective costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 998.—*औद्योगिक विवाद अधिनियम, 1947* (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सी जी आई टी/एल सी/आर/57/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40012/110/2003-आई आर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D Case No.CGIT/LC/R/57/2004) of the Central Government Industrial Tribunal-cum- Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01/05/2015.

[No. L-40012/110/2003-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/57/04

Shri L.D. Sharma, Secretary,
Akhil Bhartiya Doorsanchar Karamchari Sangh Line
Staff & Class IV,
O/o Sub-Division Telephone Officer,
Madanmahal Premnagar,
Jabalpur (MP) ...Workman/Union

...Management

Chief General Manager,
Telecom Bhawan,
Hoshangabad Road,
Bhopal (MP)

...Management

AWARD

Passed on this 16th day of April, 2015

1. As per letter dated 5-5-04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under

Section-10 of I.D. Act, 1947 as per Notification No.L-40012/110/2003-IR(DU). The dispute under reference relates to:

"whether the action of the management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Sureshchand Korav S/o Bhagwat Singh and other 34 casual workers (list enclosed) and not regularizing their service is legal? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. The case of Ist party Union Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV submitted statement of claim at Page 2/1 to 2/3. Case of Ist party Union is that the workman related to the dispute Bharat Lal and 116 others were employed as casual labour by the management of IIInd party. Those workers worked more than 240 days in calendar year preceding their termination. The Union challenged termination of services of those workmen. Union contented that all those workmen continuously worked for more than 240 days in calendar year preceding their termination. Those workers are deemed to be in continuous service under Section 25B of ID Act. That section 25-F, H of ID Act were not complied by IIInd party. The workers were not paid retrenchment compensation prior to termination of their service. The termination of service is illegal. Principles of last come first go was not followed while terminating services by management. Permission under Section 25 N of ID Act was not obtained by the management. Instead of terminating services of concerned workman, they should have been regularised as per scheme framed by the management in pursuance of directions given by Honble Apex Court.

3. By amendment, Union has further pleaded that the Supreme court had given directions in case of Daily Rated Casual Labour Employed under P&T Department versus Union of India and others issued a direction to the Government to frame a scheme for giving temporary status to the casual employees working in the department and pursuant of the said judgment the P & T department framed the scheme for purpose of giving temporary status to the workmen. In said scheme there is a provision for regularization of casual labour who put more than one year service before 30-3-85 thereafter the Telecommunication department framed another scheme and worked out cases for absorption of casual labour who have been confirmed temporary status from 25-6-93 i.e. in respect of person engaged after 30-3-85 and prior to 22-6-88. That CAT Jabalpur had allowed temporary status to the casual employees who were working along with the concerned workmen in the reference. The action of IIIrd party not giving temporary status to workman concerned with dispute is arbitrary, illegal. Those workman should have been regularised by IIInd party. On such ground, Union prays that reference be answered in its favour.

4. IIInd party filed Written Statement at Page 9/1 to 9/9 opposing claim of Union. IIInd party raised objection that Shri L.D. Sharma President of Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV is not competent to raise dispute as Ist party Union is not recognized Union. Ist party claims that he is labour/office bearer of the employees Association. BSNL was established in the year 2000. The staff was absorbed in BSNL as per the option given by the employees. The meeting with Federation/association of Union was called on 27-2-01 by management in Chairmanship of MP BSNL. On 4-10-02, the BSNL has declared the recognized Union to NFTE BSNL. After 2 years, NFTE BSNL membership was verified and BSNL Employees Union was found eligible Union. It is reiterated that Union has no locus standi to raise the dispute. It is further contended that Ist party Association challenged order of retrenchment of workers for violation of Section 25-F, H of ID Act contending management not paid retrenchment compensation to the workers shown in the enclosed list. It is alleged that their termination is void. IIInd party submits that contentions of Union are not tenable. The Telecom department was merged in BSNL. Ist party Union has not carried the amendments. His claims suffers from non-joinder of parties. It is further contended that MP Telecom Circle having largest area in the country, the telephonic facilities were less in comparison to other rural areas. In order to complete the project works, casual labours were engaged by Telecom Department, now called BSNL at various places. Those casual workers were engaged on daily payment basis for specific work. The work was discontinued after completion of projects. Workman appearing in the list submitted with statement of claim were also engaged for works as per requirements and that is for specific work on daily wages. Workman concerned with dispute are not entitled for reinstatement.

5. Ist party Association has not supplied details of the workman related to the nature of work under which authority they were working, the duration of work, the period of work therefore the claim of Ist party is not tenable.

6. IIInd party submits that the penal of list attached with statement of claim shows workman worked during 1977 to 1990. After 1990, they were not enrolled on daily wages casual labour. They were engaged for specific work as per requirement. Those who have not completed 240 days continuous service during any of the year. The dispute is raised after long lapse of time. Claim is highly belated and barred by time is not tenable. The Association failed to establish whether worker's names appear in the list attached with statement of claim are still unemployed or without any job. It is submitted that workman retrenched by IIInd party were paid compensation. Management submits that sufficient opportunity was given to Ist party Association to supply particulars in the interest of workman.

7. IIInd party further submits that as per directions issued by Supreme Court, casual labour grant of temporary

status and regularisation scheme 1989 was introduced. (a) The workers engaged prior to 30-3-85, (b) continuing as casual worker as on 7-11-89, (c) have completed 240 days in a year. The benefit of said scheme was extended to casual workers engaged in project and electrification works on the condition that—(a) they have been engaged between 31-3-85 to 22-6-88, (b) they are continuing as on the date of respective orders i.e. 25-6-93, (c) they have not remained absent for more than 365 days w.e.f. the issuance of the respect orders. IIInd party further submits that the discontinuation of workmen is covered under Section 2(oo)(bb) of ID Act and the same doesnot amount to retrenchment.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) whether the action of the management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Sureshchand Korav S/o Bhagwat Singh and other 34 casual workers and not regularizing their service is legal?	In Affirmative
(ii) if not, what relief the workman is entitled to?"	Workmen are not entitled to any relief.

REASONS

9. The terms of reference relates to legality of termination of Bharat Lal S/o Amarnath and 116 casual labours name shown in list enclosed with order of reference. Ist party Union is challenging termination of those casual labours claiming regularization as per the scheme framed by the department. Parties are not in dispute about scheme framed as per directions given by the Supreme court in case daily rated casual labours employed in P&T Dett. Versus Union of India. There is serious dispute between parties about completion of 240 days continuous service by all those casual labours and violation of Section 25-F of ID Act. The parties are also in dispute about benefit of Casual Labour Regularisation Scheme 1989. The benefit of said scheme could be extended to casual labours engaged prior to 30-3-85 continuing as casual workers on 7-11-89 and completing 240 days in a year.

10. The affidavit are filed by IIInd party of Shri M.K. Jharia, S.K. Singh, P.S. Jhabra that documents are required to be retained only for a period of 5 years. Muster roll records for the period from 90 to 97 might have been destroyed, the same are not available.

11. Witness of Ist party Shri Rajaram filed affidavit of his evidence claiming that he worked with management as

mazdoor during 1985 to 1990 under supervision of DE Mandla at Jabalpur. He completed 240 days continuous service prior to 1988. In original application 411/90, Dhanuram Tiwari and others were given temporary status by CAT, Jabalpur. In his cross-examination, he admits that since 1990, he is working at other places. He denies that he himself left job. He admits that he has no documents about completion of 240 days working. He was paid wages on daily wage basis for the casual working days. Other casual workmen not filed affidavit of evidence in the case failed to appear for cross-examination.

12. Management filed affidavit of evidence of Shri D.S. Thakur supporting its contentions. In his cross-examination, management's witness says that annual budget prepared shows the number of labours required. He claims ignorance about the budget prepared during relevant period. He claims ignorance whether attendance of those casual labours are not in muster roll, whether the wages were paid monthly or weekly. The scheme for regularization of casual labours was introduced by the department. He claims ignorance whether claim of workman for regularization was accepted or rejected. He says that the record is not available.

13. The evidence of Ist party workman about completion of 240 days continuous service by them is not supported by any document. As discussed above, management has filed affidavit that the documents are not available. The dispute pertains to the year 1990. The dispute is referred as per order dated 5-5-04 i.e. after 14 years. Management could not produce the documents after such long lapse of time. Any of the office bearer of Union is not examined as witness. All witnesses of Ist party have given evidence in their individual capacity. Various applications were filed by IIInd party requesting details about identity of workman, the period of work etc. The details submitted by Ist party Union is not substantiated by evidence of any of the witnesses.

14. Learned Counsel for Ist party Shri R.C. Shrivastava produced copy of judgement by CAT Jabalpur in OA 411/90 and others. From reading of said judgment, it is clear that most of the labours who were appointed have completed more than 240 days and chart have been filed in each case showing the actual days of work performed by each of the petitioner. These charts are not disputed by the department. The position in present case is different. The parties are in serious dispute about completion of 240 days continuous service by all 117 casual labours. In Para-6 the working days of petitioner are shown during the year 1985 to 1990.

In present case, there is no evidence about completion of 240 days service by all those casual labours except their own affidavit. Therefore common judgment by CAT cannot be followed even for persuasive purpose.

15. Learned counsel for Ist party Shri R.C. Shrivastava relies on ratio held in catin of cases—

In case of Employer versus President, Rajhara colliery Mazdoor Sangh reported in 2014-II-LLJ-333. Their Lordship of Jharkhand High Court dealing with regularization of casual labours and the question whether Tribunal Labour court have power to issue directions for creation of post for regularization of workmen.

In para-22 of the judgment, it was observed that WW-1 and WW-2 have consistently stated that the casual wagon loaders have individually completed 240 days in a calendar year. To substantiate the oral evidence, on behalf of the workmen, the statement prepared by the Union as Exhibit W-3 in respect of production in the colliery and number of days and attendance put in per head was produced. Workmen have discharged the burden cast upon them establishing that the workmen worked for more than 240 days.

In present case, the evidence of witnesses of Ist party is not supported by any documents like Exhibit W-3 in above cited case. Therefore the ratio cannot be applied to present case at hand.

In case of H.D. Singh versus Reserve Bank of India and others reported in 1985 4(SCC)201. Their Lordship of the Court dealing with Section 25(B)(2)(a)(ii) had actual working for not less than 240 days in a year. Employer's failure to produce attendance register to controvert workman's claim. On facts held workman's claim acceptable.

In present case, the dispute relates to working of casual employees during the period 1977 to 1990. The dispute is referred in 2004. The documents relating to work of casual labours are not available. The ratio held in above cited case cannot be applied to case at hand.

In case between BSNL versus Bhurimal reported in 2014(14o)FLR 901. Their Lordship dealing with the question of reinstatement with backwages considering the facts workman had worked almost 15 years as daily wage lineman, management couldnot prove any agreement with the contractor to prove that he was a contract employee. The finding record by CGIT upheld by the single Judge that respondent directly worked under the appellant for almost 15 years as a lineman on daily wage basis. Their Lordship held termination rightly held to be illegal in view of ID Act. Compensation Rs. 3 Lakh was directed to be paid

The facts of present case are not comparable. The evidence of witnesses of Ist party shows they were working as casual labours around 1985 to 1990. Their evidence is not supported by any documents.

In case between Surendra Singh versus Executive Engineer HPSEB Division Shimla reported in 2013 (138) FLR 1048. Their Lordship of Himachal Pradesh held rules of evidence in its strict sense not required to be applied in

a proceeding before the Labour Court which as a matter of fact conducts an inquiry summarily under the ID Act.

In case of Buchbai versus Nagpur University reported in AIR(83) 1946 Nagpur 377. Their Lordship held statements recorded on orders passed by Income Tax Officers are public documents. Certified copies thereof are admissible in evidence. The mere fact that the document is produced is not sufficient for its rejection.

Considering facts and evidence in the case, ratio held in the case has no bearing to the controversy between parties.

In case of Gautam sarup versus Leela Jetly reported in 2008(4) MPLJ 113. Their Lordship held the admission made by a party to the lis is admissible against him proprio vigore. A categorical admission cannot be resiled from but in a given case, it may be explained or clarified.

In present case, IIInd party has not admitted completion of 240 days continuous service rather it is case of dispute between parties therefore the ratio cannot be applied to present case.

In case of Sudarshan Rajpoot versus UP State Road Transport Corporation reported in 2015(144)FLR-7 their Lordship considering finding of fact recorded by the Labour Court that termination of the appellant was illegal. Finding of Labour Court that appellant was not appointed on contract basis as Driver. Work extracted for several years of permanent nature alleged employment on contract basis wholly impermissible and amounts to unfair labour practice as defined under Section 2(ra) of ID Act 1947.

The ratio held in the case cannot be applied to present case as the evidence of Ist party witnesses is that they were engaged as casual labours on daily wages. The period of their working as casual labour is not established by cogent evidence. The self serving evidence of workman is different to be relied when dispute is raised after long lapse of time rather the legal position is settled that the disputes raised after 7 years cannot be said proper.

16. Though President of Union has raised dispute, any of the office bearer of the Union has not appeared as witness to support claim of all casual labours related to present dispute. That dispute is raised after lapse of about 14 years. The documents were not available with IIInd party about working of all those casual labours. For lapse of long time, dispute is raised. IIInd party cannot be blamed. The claim of Ist party Union for regularization of casual labours or completion of 240 days continuous service preceding 12 months termination of services cannot be accepted. Even details of all those causal labours, place and period of their working is not supported by cogent evidence by the

Ist party Union therefore I record my finding in Point No. 1 in Affirmative.

17. In the result, award is passed as under:—

- (1) The action of the management of Chief General Manager, MP Telecom Circle, Bhopal, MP in terminating the services of Shri Sureshchand Korav S/o Bhagwat Singh and other 34 casual workers and not regularizing their service is proper and legal.
- (2) Workmen are not entitled to any relief. Parties to bear their respective costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 999.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/58/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40012/112/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Case No. CGIT/LC/R/58/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01/05/2015.

[No. L-40012/112/2003-IR (DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/58/04

Shri L.D. Sharma, Secretary,
Akhil Bhartiya Doorsanchar
Karamchari Sangh Line
Staff & Class IV,
O/o Sub Division Telephone Officer,
Madanmahal Premnagar,
Jabalpur (MP) ... Workman/Union

Versus

Chief General Manager,
Telecom Bhawan,
Hoshangabad Road,
Bhopal (MP)

...Management

AWARD

Passed on this 16th day of April 2015

As per letter dated 5.5.04 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under section-10 of I.D. Act, 1947 as per Notification No. L-40012/112/2003-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Chief General Manager, MP Telecom Circle, Bhopal, MP in terminating the services of Shri Dhanraj Singh, S/o Shri Onkar Prasad and other 57 casual workers (list enclosed) and not regularizing their service is legal? If not, to what relief the workmen are entitled to?"

2. After receiving reference, notices were issued to the parties. The case of Ist party Union Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV submitted statement of claim at Page 2/1 to 2/3. Case of Ist party Union is that the workman related to the dispute Bharat Lal and 116 others were employed as casual labour by the management of IIInd party. Those workers worked more than 240 days in calendar year preceding their termination. The Union challenged termination of services of those workmen. Union contented that all those workmen continuously worked for more than 240 days in calendar year preceding their termination. Those workers are deemed to be in continuous service under Section 25B of ID Act. That section 25-F, H of ID Act were not complied by IIInd party. The workers were not paid retrenchment compensation prior to termination of their service. The termination of service is illegal. Principles of last come first go was not followed while terminating services by management. Permission under Section 25 N of ID Act was not obtained by the management. Instead of terminating services of concerned workman, they should have been regularised as per scheme framed by the management in pursuance of directions given by Hon'ble Apex Court.

3. By amendment, Union has further pleaded that the Supreme Court had given directions in case of Daily Rated Casual Labour Employed under P&T Department *versus* Union of India and others issued a direction to the government to frame a scheme for giving temporary status to the casual employees working in the department and pursuant of the said judgment the P&T Department framed the scheme for purpose of giving temporary status to the workmen. In said scheme there is a provision for regularization of casual labour who put more than one year service before 30-3-85 thereafter the Telecommunication department framed another scheme and worked out cases for absorption of casual labour who have been confirmed

temporary status from 25-6-93 *i.e.* in respect of person engaged after 30-3-85 and prior to 22-6-88. That CAT Jabalpur had allowed temporary status to the casual employees who were working along with the concerned workmen in the reference. The action of IIInd party not giving temporary status to workman concerned with dispute is arbitrary, illegal. Those workman should have been regularised by IIInd party. On such ground, Union prays that reference be answered in its favour.

4. Shri Ram Vinay Tiwari has submitted separate statement of claim at Page 2 to 4. Case of Ram Vinay Tiwari is that he was engaged as a labour at Betul and Itarsi, Bina. He was working under Assistant Engineer, the details were given in muster roll. He was working during the period April 87 to July 89 for a period of 2 years 3 months. Monthly payment was made to him. He was discontinued without notice in July 1989 he was told that the work was closed, he would be called whenever the work is started, no intimation was given to him that he completed 240 days continuous service prior to 1984.

5. IIInd party filed Written Statement at Page 9/1 to 9/9 opposing claim of Union. IIInd party raised objection that Shri L.D. Sharma President of Akhil Bhartiya Doorsanchar Karamchari Sangh Line Staff & Class IV is not competent to raise dispute as Ist party Union is not recognized Union. Ist party claims that he is labour/office bearer of the employees Association. BSNL was established in the year 2000. The staff was absorbed in BSNL as per the option given by the employees. The meeting with Federation/Association of Union was called on 27-2-01 by management in Chairmanship of MP BSNL. On 4-10-02, the BSNL has declared the recognized Union to NFTE BSNL. After 2 years, NFTE BSNL membership was verified and BSNL Employees Union was found eligible Union. It is reiterated that Union has no locus standi to raise the dispute. It is further contented that Ist party Association challenged order of retrenchment of workers for violation of Section 25-F, H of ID Act contending management not paid retrenchment compensation to the workers shown in the enclosed list. It is alleged that their termination is void. IIInd party submits that contentions of Union are not tenable. The Telecom department was merged in BSNL. Ist party Union has not carried the amendments. His claims suffers from non-joinder of parties. It is further contented that MP Telecom Circle having largest area in the country, the telephonic facilities were less in comparison to other rural areas. In order to complete the project works, casual labours were engaged by Telecom Department, now called BSNL at various places. Those casual workers were engaged on daily payment basis for specific work. The work was discontinued after completion of projects. Workman appearing in the list submitted with statement of claim were also engaged for works as per requirements and that is for specific work on daily wages. Workman concerned with dispute are not entitled for reinstatement.

6. Additional Written Statement is submitted by IIInd party contending that the workman was working in Railway Electrification Project. The claim of Ist party Union deserves to be dismissed.

7. Ist party Association has not supplied details of the workman related to the nature of work under which authority they were working, the duration of work, the period of work therefore the claim of Ist party is not tenable.

8. IIInd party submits that the penal of list attached with statement of claim shows workman worked during 1977 to 1990. After 1990, they were not enrolled on daily wages casual labour. They were engaged for specific work as per requirement. Those who have not completed 240 days continuous service during any of the year. The dispute is raised after long lapse of time. Claim is highly belated and barred by time is not tenable. The Association failed to establish whether worker's names appear in the list attached with statement of claim are still unemployed or without any job. It is submitted that workman retrenched by IIInd party were paid compensation. Management submits that sufficient opportunity was given to It party Association to supply particulars in the interest of workman.

9. IIInd party further submits that as per directions issued by Supreme Court, casual labour grant of temporary status and regularisation scheme 1989 was introduced. (a) The workers engaged prior to 30-3-85, (b) continuing as casual worker as on 7-11-89, (c) have completed 240 days in a year. The benefit of said scheme was extended to casual workers engaged in project and electrification works on the condition that—(a) they have been engaged between 31-3-85 to 22-6-88, (b) they are continuing as on the date of respective orders *i.e.* 25-6-93, (c) they have not remained absent for more than 365 days w.e.f. the issuance of the respective orders. IIInd party further submits that the discontinuation of workmen is covered under Section 2(oo)(bb) of ID Act and the same do not amount to retrenchment.

10. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

<p>(i) Whether the action of the management of Chief General Manager, MP Telecom Circle, Bhopal, MP in terminating the services of Shri Dhanraj Singh, S/o Shri Onkar Prasad and other 57 casual workers and not regularizing their service is legal?</p> <p>(ii) If not, what relief the workman is entitled to?"</p>	<p>In Affirmative</p> <p>Workmen are not entitled to any relief.</p>
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REASONS

11. The terms of reference relates to legality of termination of Bharat Lal s/o Amarnath and 116 casual labours name shown in list enclosed with order of reference. Ist party Union is challenging termination of those casual labours claiming regularization as per the scheme framed by the department. Parties are not in dispute about scheme framed as per directions given by the Supreme Court in case daily rated casual labours employed in P&T Dett. *Versus* Union of India. There is serious dispute between parties about completion of 240 days continuous service by all those casual labours and violation of Section 25-F of ID Act. The parties are also in dispute about benefit of Casual Labour Regulariation Scheme 1989. The benefit of said scheme could be extended to casual labours engaged prior to 30-3-85 continuing as casual workers on 7-11-89 and completing 240 days in a year.

12. Witness of Ist party Shri Rajaram filed affidavit of his evidence claiming that he worked with management as mazdoor during 1985 to 1990 under supervision of DE Mandla at Jabalpur. He completed 240 days continuous service prior to 1988. In original application 411/90, Dhanuram Tiwari and others were given temporary status by CAT, Jabalpur. In his cross-examination, he admits that since 1990, he is working at other places. He denies that he himself left job. He admits that he has no documents about completion of 240 days working. He was paid wages on daily wage basis for the casual working days. Any other casual workmen have not filed affidavit of evidence in the case.

13. Management filed affidavit of evidence of Shri B.S. Thakur supporting its contentions. In his cross-examination, management's witness says that annual budget prepared shows the number of labour required. He claims ignorance about the budget prepared during relevant period. He claims ignorance whether attendance of those casual labours are not in muster roll, whether the wages were paid monthly or weekly. The scheme for regularization of casual labours was introduced by the department. He claims ignorance whether claim of workman for regularization was accepted or rejected. He says that the record is not available.

14. The evidence of Ist party workman about completion of 240 days continuous service by them is not supported by any document. As dicussed above, management has filed affidavit that the documents are not available. The dispute pertains to the year 1990. The dispute is referred as per order dated 5-5-04 *i.e.* after 14 years. Management could not produce the documents after such long lapse of time. Any of the office bearer of Union is not examined as witness. All witnesses of Ist party have given evidence in their individual capacity. Various applications

were filed by IIInd party requesting details about identity of workman the period of work etc. The details submitted by Ist party Union is not substantiated by evidence of any of the witnesses.

15. Learned counel for Ist party Shri R.C. Shrivastava produced copy of judgment by CAs Jabalpur in OA 411/90 and others. From reading of said judgment, it is clear that most of the labours who were appointed have completed more than 240 days and chart have been filed in each case showing the actual days of work performed by each of the petitioner. These charts are not disputed by the department. The position in present case is different. The parties are in serious dispute about completion of 240 days continuous service by all 117 casual labours. In Para-6 the working days of petitioner are shown during the year 1985 to 1990.

In present case, there is no evidence about completion of 240 days service by all those casual labours except their own affidavit. Therefore common judgment by CAT cannot be followed even for persuasive purpose.

16. Learned counsel for Ist party Shri R.C. Shrivastava relies on ratio held in catin of cases—

In case of Employer *versus* President, Rajhara Colliery Mazdoor Sangh reported in 2014-II-LLJ-333. Her Lordship of Jharkhand High Court dealing with regularization of casual labours and the question whether Tribunal Labour court have power to issue directions for creation of post for regularization of workmen.

In para-22 of the judgment, it was observed that WW-1 and WW-2 have consistently stated that the casual wagon loaders have individually completed 240 days in a calendar year. To substantiate the oral evidence, on behalf of the workmen, the statement prepared by the Union as Exhibit W-3 in respect of production in the colliery and number of days and attendance put in per head was produced. Workmen have discharged the burden cast upon them establishing that the workmen worked for more than 240 days.

In present case, the evidence of witnesses of Ist party is not supported by any document like Exhibit W-3 in above cited case. Therefore the ratio cannot be applied to present case at hand.

In case of H.D. Singh *versu* Reserve Bank of India and others reported in 1985/4(SCC) 201. Their Lordship of the court dealing with Section 25(B)(2)(a)(ii) had actual working for not less than 240 days in a year. Employer's failure to produce attendance register to controvert workman's claim. On facts held workman's claim acceptable.

In present case, the dispute relates to working of casual employees during the period 1977 to 1990. The dispute is referred in 2004. The documents relating to work

of casual labours are not available. The ratio held in above cited case cannot be applied to case at hand.

In case between BSNL *versus* Bhurimal reported in 2014(14o)FLR 901. Their Lordship dealing with the question of reinstatement with backwages considering the facts workman had worked almost 15 years as daily wage lineman, management could not prove any agreement with the contractor to prove that he was contract employee. The finding record by CGIT upheld by the single Judge that respondent directly worked under the appellant for almost 15 years as a lineman on daily wage basis. Their Lordship held termination rightly held to be illegal in view of ID Act. Compensation Rs. 3 Lakh was directed to be paid.

The facts of present case are not comparable. The evidence of witnesses of Ist party shows they were working as casual labours around 1985 to 1990. Their evidence is not supported by any documents.

In case between Surendra Singh *versus* Executive Engineer HPSEB Division Shimla reported in 2013(138)FLR 1048. Their Lordship of Himachal Pradesh held rules of evidence in its strict sense not required to be applied in a proceeding before the Labour Court which as a matter of fact conducts an inquiry summarily under the ID Act.

In case of Buchbai *versus* Nagpur University reported in AIR (83) 1946 Nagpur 377. Their Lordship held statements recorded on orders passed by Income Tax Officers are public documents. Certified copies thereof are admissible in evidence. The mere fact that the document is produced is not sufficient for its rejection.

Considering facts and evidence in the case, ratio held in the case has no bearing to the controversy between parties.

In case of Gautam Sarup *versus* Leela Jetly reported in 2008(4) MPLJ 113. Their Lordship held the admission made by a party to the list is admissible against him *proprio vigore*. A categorical admission cannot be resiled from but in a given case, it may be explained or clarified.

In present case, IIInd party has not admitted completion of 240 days continuous service rather it is case of dispute between parties therefore the ratio cannot be applied to present case.

In case of Sudarshan Rajpoot *versus* UP State Road Transport Corporation reported in 2015 (144) FLR-7 their Lordship considering finding of fact recorded by the Labour Court that termination of the appellant was illegal. Finding of Labour Court that appellant was not appointed on contract basis as Driver. Work extracted for several years of permanent nature alleged employment on contract basis wholly impermissible and amounts to unfair labour practice as defined under Section 2(ra) of ID Act 1947.

The ratio held in the case cannot be applied to present case as the evidence of Ist party witnesses is that they were engaged as casual labours on daily wages. The period of their working as casual labour is not established by cogent evidence. The self serving evidence of workman is different to be relied when dispute is raised after long lapse of time rather the legal position is settled that the disputes raised after 7 years cannot be said proper.

17. Though President of Union has raised dispute, any of the office bearer of the Union has not appeared as witness to support claim of all casual labours related to present dispute. That dispute is raised after lapse of about 14 years. The documents were not available with IIInd party about working of all those casual labours. For lapse of long time, dispute is raised. IIInd party cannot be blamed. The claim of Ist party Union for regularization of casual labours or completion of 240 days continuous service preceding 12 months termination of services cannot be accepted. Even details of all those causal labours, place and period of their working is not supported by cogent evidence by the Ist party Union therefore I record my finding in Point No. 1 in Affirmative.

18. In the result, award is passed as under:—

- (1) The action of the management of Chief General Manager, MP Telecom Circle, Bhopal MP in terminating the services of Shri Dhanraj Singh, S/o Shri Onkar Prasad and other 57 casual workers and not regularizing their service is proper and legal.
- (2) Workmen are not entitled to any relief. Parties to bear their respective costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 1000.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/167/2001) प्रकाशित करती है जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40012/205/2001-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 1000.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central

Government hereby publishes the award (I.D. Case No.CGIT/LC/R/167/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01/05/2015.

[No. L-40012/205/2001-IR(DU)]
P. K. VENUGOPAL, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/167/2001

Shri Mangilal Bagri,
Vill : Kodkiya,
Machalpur, Tehsil : Jeerapur,
Rajgarh

..... Workman

Versus

Chief General Manager,
Telecom, MP Circle,
Telecom Bhawan, Hoshangabad Road,
Bhopal
TDE, Rajgarh,
At Biaora, Rajgarh

.... Management

AWARD

(Passed on this 6th day of April, 2015)

1. As per letter dated 1.11.2001 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/205/2001-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Telecom District Engineer, Biaora in terminating the services of Shri Mangilal Bagri S/o Shri Purelal Bagri *w.e.f.* December 1997 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that in January 1990, he was appointed as casual labour in Telecom Department. He was working in different Telephone Exchanges. He was continuously working from 1990 to 1997. He was appointed on permanent vacant post of labour. He completed 240 days continuous service during each of the calendar year. His services were not regularised, rather his services were dispensed with illegally from 31.12.97. He was terminated without any reasons violating

law. Termination of his services amounts to unfair labour practice and victimization. He was not regularised in services. Any chargesheet was not issued to him that termination of his service is in violation of Section 25-F of ID Act. On such ground, workman prays for his reinstatement with back wages.

3. IIInd party filed Written Statement on 6.4.2011 opposing claim of workman. IIInd party contends that workman was never engaged on muster roll. Appointment letter was not issued to him. Workman had not completed 240 days during any of the year. As workman is not regular employee of the management, provisions of ID Act is not applicable.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the management of Telecom District Engineer, Biaora in terminating the services of Shri Mangilal Bagri S/o Shri Purelal Bagri *w.e.f.* December 1997 is justified?
- (ii) If not, what relief the workman is entitled to?"

Workman is not entitled to any relief.

REASONS

5. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Workman filed affidavit of his evidence at Page 7/1 to 7/2 supporting his contentions in statement of claim. However he remained absent for his cross-examination. His evidence cannot be considered.

6. Management's witness Ramjani Khan filed affidavit of his evidence denying workman completing 240 days continuous service. The working days are narrated in Para-4 of his affidavit. Ist party remained absent, witness could not be cross-examined. As workman has not adduced any evidence, the evidence of management's witness remained unchallenged. Therefore claim of workman cannot be accepted. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result, award is passed as under:—

- (1) The action of the management of Telecom District Engineer, Biaora in terminating the services of Shri Mangilal Bagri S/o Shri Purelal Bagri *w.e.f.* December 1997 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 1001.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या सीजीआईटी/एलसी/आर/116/00) प्रकाशित करती हैं जो केन्द्रीय सरकार को 01/05/2015 को प्राप्त हुआ था।

[सं. एल-40012/121/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 1001.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref. Case No. CGIT/LC/R/116/00) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01/05/2015.

[No. L-40012/121/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/116/00

Shri Premnarayan Prajapati,
S/o Shri Jagannath Prajapati,
Vill Ginyari,
Tehsil Narsinghgarh,
Distt. Rajgarh

..... Workman

Versus

Chief General Manager,
Telecom, MP Circle,
Telecom Bhawan, Hoshangabad Road,
Bhopal
TDE, Rajgarh,
At Biaora, Rajgarh

.... Management

AWARD

(Passed on this 6th day of April, 2015)

1. As per letter dated 21.06.00 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/121/2000-IR(DU). The dispute under reference relates to:

"Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Premnarayan Prajapati S/o Shri Prajapati w.e.f. December 1996 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Ist party workman filed statement of claim at Page 2/1 to 2/4. Case of workman is that he was initially appointed as casual labour in Telecom Department in October 1987. He was working under control of Sub Divisional Officer, Biaora, distt. Rajgarh. He was doing his service with utmost honesty. His service record was unblemished. He was continuously working from 1987 to December 1996. That he was appointed on permanent vacant post of labour. He completed more than 240 days service during calendar year. However his services were not regularised on post of labour. As he completed 240 days service, he was entitled to be regularised. Instead he discontinued from December 1996. The action of IIInd party is discriminatory contrary to the law. Principles of natural justice were not followed.

3. Ist party workman further submits that he was posted at Narsinghgarh Sub Division. He was entrusted duty of maintaining testing and recording register. That he was engaged for work of permanent nature. He continuously worked more than 10 years. Inspite of directions and circulars of Central Govt., Telecommunication department, he was denied regularization. Any chargesheet was not served on him it is reiterated that termination of his service is in violation of Section 25-F of ID Act. It also amounts to unfair labour practice. On such ground workman prays for his reinstatement with back wages. He has contented that he is not gainfully employed anywhere, his family is in starving condition. On such ground, he prays for reinstatement with backwages.

4. IIInd party filed Written Statement on 6th April, 2011 opposing claim of Ist party workman. IIInd party has denied engagement of workman since 1987. That workman was never appointed by the management workman does work in Sub Division. Question of regularization does not arise. It is also contented that workman never worked in the Division. He was not appointed by management. Termination of his service is in violation of Section 25-F of ID Act is denied. IIInd party submits workman is not entitled to any reliefs.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the management of Chief General Manager, Telecom in terminating the services of Shri Premnarayan Prajapati S/o Shri Prajapati w.e.f. December 1996 is justified? In Negative

(ii) If not, what relief the workman is entitled to?" As per final order.

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Claim of workman is denied by IIInd party workman filed affidavit of his evidence. Workman has stated in his affidavit that he has worked as casual labor from 1987 to 1996 in the department. He was working under Sub Division Bijura. He worked more than 240 days during each of the year. He was terminated without notice, he was not paid retrenchment compensation. His request for employment was not considered. In his cross-examination, workman says the post on which he was working was not published. He claimed ignorance whether his name was sponsored through Employment Exchange. He denies suggestion that he never worked in establishment of IIInd party.

7. Management filed affidavit of witness Ramjani Khan. The witness of management says workman was not appointed in 1987. He has not done any work in the department. Workman not completed 240 days service in any calendar year. Workman was not appointed. In his cross-examination, witness of management denies workman was working as labour in the department. He denied the documents referred to him. Lineman and other supporting officials are not competent to issue any circular about working of any labour. He denied suggestion that workman was continuously working more than 6 years in department, that workman was not paid compensation neither termination notice was served on him.

8. The evidence of Ist party and management's witness is on oath. Any co-employee is not examined by workman. Ist party workman has produced copies of documents 10/3 to 10/25. Learned counsel for Ist party further did not take any steps for proving those documents.

9. Learned counsel for IIInd party Shri M.P. Kapoor submits that completion of 240 days service burden lies on workman is not discharged. Reliance is placed on ratio held in—

Case of R.M. Yellatti versus Assistant Executive Engineer reported in 2006(1) SCC 106. Their Lordship dealing with question of evidence and burden of proof held burden of proof lies on workman. It is for workman to adduce cogent evidence, both oral and documentary. Mere affidavits or self serving statements made by workman will not suffice. Evidence Act not applicable to proceeding under Section 10 of ID Act. In cases involving daily wages, workman can only call upon employer to produce before court nominal muster roll for the given period, and other documents if in existence. Drawing of adverse inference would ultimately depend thereafter on facts of each case.

Learned counsel for Ist party workman submitted written synopsis of argument submitting that workman worked more than 10 years. The notes of argument also refers to working days of workman that workman was not regularised for long period amounts to unfair labour practice.

10. Learned counsel relies on ratio held in—

Case of Officer Incharge, Defence standardization Cell versus Mukesh Kumar reported in 2013-LAB.I.C. 3329. His Lordship of Delhi High Court considering Practice of giving appointment to workman on monthly basis and renewing it every month for a period of 3 years to defeat rights of workman amounts to unfair labor practice.

In present case, evidence of workman is not shattered on material points. Contrary suggestions by counsel for IIInd party are denied. Management's witness denies certificates of working days referred to him. I find evidence of workman working more than 240 days is cogent. His services are terminated without notice in violation of Section 25-F of ID Act and therefore I record my finding in Point No. 2 in Negative.

11. Point No. 2- In view of my finding in Point No. 1 services of workman are terminated without notice, question arises whether workman is entitled for reinstatement with back wages. In case 2013-LAB.I.C. 3329 cited above, their Lordship considering working more than 3 years upheld reinstatement with back wages. The facts of present case are not comparable. Ratio cannot be applied to case at hand.

In case of Devendra Singh versus Municipal Council Sanaur reported in 2011 (130)FLR-337. Their Lordship restored award passed by Labour Court for reinstatement. In present case, name of workman was not sponsored through Employment Exchange, was not engaged following selection process. The reading of para-3 of above cited case shows that the employee was terminated because the Director, Local Self Govt. did not give approval to the resolution passed for his employment. The order of Industrial Court for regularization was upheld.

In present case, the workman was not appointed following selection process. As such compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

12. In the result, award is passed as under:—

- (1) The action of the management of Chief General Manager, Telecom in terminating the services of Shri Premnarayan Prajapati S/o Shri Prajapati w.e.f. December 96 is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 मई, 2015

का.आ. 1002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार टेलीकॉम मध्य प्रदेश सरकाल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या केस नं. सीजीआईटी/एलसी/आर/150/00) प्रकाशित करती है जो केन्द्रीय सरकार को 01-05-2015 को प्राप्त हुआ था।

[सं. एल-40012/258/2000-आई आर (डीयू)]

पी० के० वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th May, 2015

S.O. 1002.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (I.D. Ref Case No. CGIT/LC/R/150/00) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom MP Circle and their workman, which was received by the Central Government on 01-05-2015.

[No. L-40012/258/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR NO. CGIT/LC/R/150/00

Shri Lakshmichand Sen,
S/o Bhanwar Lal Sen,
Vill Barkheda,
PO Barkheda, Tehsil Biaora,
Rajgarh (MP)

....Workman

Versus

Chief General Manager,
Telecom, MP Circle,
Telecom Bhawan, Hoshangabad Road,
Bhopal
TDE, Rajgarh,
At Biaora, Rajgarh

....Management

AWARD

Passed on 6th day of April 2015

As per letter dated 29-8-2000 by the Government of India, Ministry of Labour, New Delhi, the reference is

received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-40012/258/2000/IR(DU). The dispute under reference relates to:

"Whether the action of the Management of Chief General Manager (Telecom)/TDE in terminating the services of Shri Lakshmichand Sen S/o Shri Bhanwarlal Sen w.e.f. 1995 is justified? If not, to what relief the workman is entitled?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at page 6/1 to 6/4. Case of workman is that he was working with IIInd party No. 4 as casual labour during 1987 to 1995. He was terminated without notice. IIInd party No. 1, 2 are Controlling Authorities. That in AIR 1987-SCC-2342. Apex Court directed to frame scheme for regularization of casual labours. Scheme for regularization of casual labours were introduced by IIInd party on 7-11-89. The benefit of scheme was extended to the casual labours working till 30th March, 1985. Workman was not given benefit of regularization scheme, instead his services were terminated in 1995.

3. Ist party workman submits he had completed 240 days continuous service. He was not given benefit of regularization and pay scale. Minimum wages were also not paid to him. IIInd party engaged him paying Rs. 1200 p.m. His services were orally terminated in violation of law. On such ground, he prays for reinstatement and regularization of his service.

4. IIInd party filed Written Statement on 6-4-2011 opposing claim of workman. That the workman was engaged as per availability of work when ever required. Ist party workman was never engaged on muster roll. Appointment letter was not issued to him. Workman had not completed 240 days continuous service. The claim of workman for reinstatement/regularization is fabricated. Violation of provisions of ID Act is denied.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the In Negative management of Chief General Manager (Telecom)/TDE in terminating the services of Shri Lakshmichand Sen S/o Shri Bhanwarlal Sen w.e.f. 1995 is justified?
- (ii) If not, what relief the As per final order." workman is entitled to?

REASONS

6. The terms of reference does not include claim for regularization of service to workman. Workman filed

affidavit of his evidence stating that he was working with IIInd party from 1987 to 1995. He completed 240 days working during each of the year. He was terminated without notice. Retrenchment compensation was not paid to him. His request for reemployment were not considered Jr. employees are engaged after his termination. Since 1995, he is unemployed. That he worked more than 9 years. In his cross-examination, workman says post on which he was working was not advertised. His name was not sponsored through Employment Exchange. He was not interviewed. He was doing work of digging ditches, laying lines. He was paid wages for the days he was working. He denies that he had not completed 240 days during any of the year.

7. Management's witness Ramjani Khan filed affidavit of his evidence. Management's witness says that workman was engaged purely as casual labour for specific work and specific period. After work was finished, his service automatically discontinued. There is no question of issuing notice or paying retrenchment compensation. Management's witness in his cross says Ist party was working as casual labour during 1987 to 1992. He had not worked more than 240 days during any of the year. Workman was not paid compensation, notice was not issued to him as he was not regularly appointed. Management's witness denied suggestion that workman was continuously working from 1987 to 1992. Management's witness says that if muster registers are traced, the same will be produced. That he has copy of muster. Management's witness has admitted Ist party workman was working as casual labour from 1987 to 1992. Notice was not issued, compensation was not paid to workman. Application for production of document was submitted by workman. Management has not produced any document. Therefore evidence of workman deserves to be accepted that he completed 240 days continuous service. His services are terminated without notice, retrenchment compensation is not paid to him. Termination of services of workman is in violation of Section 25-F of ID Act. For above reasons, I record my finding in Point No. 1 in Negative.

8. Point No. 2—In view of my finding in Point No.1, termination of workman as per evidence of workman in cross-examination, he was not sponsored through Employment Exchange, post was not advertised, workman was not interviewed. Though initially workman pleaded that he was working from 1987 to 1995, management's witness in cross-examination suggested that workman was regularly working from 1987 to 1995. Any documents are not produced by either parties. Considering the period of working, compensation Rs. One Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

9. In the result, award is passed as under:—

- (1) The action of the management of Chief General Manager (Telecom)/TDE in terminating the services of Shri Lakshmichand Sen S/o Shri Bhanwarlal Sen w.e.f. 1995 is legal and proper.
- (2) IIInd party is directed to pay compensation Rs. One Lakh to the workman.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 6 मई, 2015

का.आ. 1003.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसार में केन्द्रीय सरकार एयरपोर्ट अर्थारिटी ऑफ इंडिया एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, मुंबई के पंचाट (संदर्भ संख्या 19/2004) प्रकाशित करती है जो केन्द्रीय सरकार को 27-04-2015 को प्राप्त हुआ था।

[सं. एल-11011/17/2004-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 6th May, 2015

S.O. 1003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. No.19/2004) of the Central Government Industrial Tribunal/Labour Court 2, Mumbai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workman, which was received by the Central Government on 27-04-2015.

[No. L-11011/17/2004-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

PRESENT

K.B. KATAKE,
Presiding Officer

REFERENCE NO. CGIT-2/19 OF 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF

(1) AIRPORTS AUTHORITY OF INDIA

**(2) SECURITY GUARDS BOARD FOR GREATER
BOMBAY & THANE DISTRICTS**

1. The Airport Director
Airports Authority of India
Chhatrapati Shivaji International Airport
Domestic Terminal 1-B, Mumbai 400 099.
2. The Secretary
Security Guards Board for Greater Bombay &
Thane Districts
Rollers Pvt. Ltd. Compound
L.B.S. Marg,
Bhandup (W)
Mumbai-400 078.

AND

THEIR WORKMEN.

The General Secretary
Krantikari Suraksha Rakshak Sangathan
180-C, 1st Floor, Dharavi Koliwada
J.J. Keni Gali, Dharavi Road
Mumbai-400 017

APPEARANCES:

FOR THE EMPLOYER NO. 1: Ms. Geeta Raju,
Advocate
i/b M/s. M.V. Kini & Co.

FOR THE EMPLOYER NO. 2: Mrs. M.P. Joshi
Advocate

FOR THE WORKMEN: No appearance.

Mumbai, dated the 27th March, 2015

AWARD

The Government of India, Ministry of Labour & Employment by its Order No. L-11011/17/2004-IR (M), dated 29.04.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"Whether the Airports Authority of India (IAD), Mumbai or Security Guards Board for Greater Mumbai and Thane District is the employer in the case of Shri V.D. Suryavanshi? Whether Shri V.D. Suryavanshi has worked on 5th, 17th, 21st, 24th & 30th June 2000 and for 17 days in the month of July 2002 in the establishment of Airports Authority of India (IAD) Mumbai through the Security Guards Board? If so, to what relief Shri Suryavanshi is entitled for?"

2. After receipt of the reference notice was sent to both the parties. Second party Workman appeared before this Tribunal on 24-08-2004 and filed his Statement of Claim at Ex-6. According to the Second party he is a member of the Krantikari Suraksha Sanghatana Registered under the Trade Union Act, 1926. He is registered with the Security

Guards Board and the Security Guard Board allotted him to the Airport Authority of India. The AAI is arbitrarily transferring and posting the workman. On 1-5-2000 he has been assigned to a Security Supervisor to harass the workman. Union protested this action of AAI vide their letter dt. 5-5-2000. The workman worked on the new post in the month of June 2000. First party Management no. 1 marked the workman absent and deducted his wages for the days 5th, 17th, 21st, 24th, 29th & 30th June 2000 on which dates he has worked. Workman demanded the illegally deducted wages of 6 days by letter dt. 17-7-2000 but the management did not reply. In the month of July 2000 the workman has worked for 29 days but he was paid wages of only 12 days. Workman demanded the illegally deducted wages of balance days by letter dt. 17-9-2000 but the management did not reply. According to the workman he was being victimized for his union activities. Workman therefore prays to direct the management no. 1 to refund the amount illegally deducted in June 2000 to the tune of Rs. 1146 & July 2000 Rs. 1571/- and also prays for interest @ 18% p.a. from the date of June 2000 and also prays for cost.

3. Management resisted the statement of claim of the workman vide its Written statement at Ex.-11. According to the management no. 1, the reference is bad in law as the union does not represent the workmen employed in its establishment. In order to become the individual dispute as an industrial dispute under Section 2 (k) of the I.D. Act it has to be established either by a resolution or otherwise that it had been taken up by the union of workmen or by an appreciable number of workmen employed by it: who must have a direct and substantial interest in espousing the cause of Mr. Suryavanshi who is not the workman as defined under Section 2 (s) of the Act. Thus the industrial dispute cannot be raised in respect of money claim for which there is a provision under Section 33 C (2) of the Act. According to the first party no. 1, the concerned workman was never employed by it. He is a registered Security Guard of the Security Guards Board for Greater Bombay and Thane Distt. who allotted him to the Authority. It is an admitted fact that the Board makes payment of wages and other dues to the workman. Under these circumstances, first party submits that the reference is not maintainable in law against it. First party no. 1 has denied all the allegations made by the workman in the statement of claim. According to the first party no. 1, it did not effect payment of wages for the months of June 2000 and July 2002 or July 2000 and hence question of refunding of the allegedly deducted amounts of Rs. 1,146 & Rs. 1571 for the months of June and July 2000 respectively does not arise. Therefore the workman is not entitled to any relief.

4. Issues were framed and re-casted at Ex-12. Thereafter the matter was fixed for recording evidence of Second party Union. Second party union neither attended this Tribunal nor filed Affidavit in lieu of examination-in-

chief. Order "No affidavit from Union" was passed on 6-3-2012. Management filed Affidavit of Shri P.D. Koli (MW-1) at Ex-23. Since union remained absent "no cross of MW-1 was passed on 27/2/2013. Thereafter management filed their Written Arguments. Matter was adjourned for arguments by Union on number of dates, but they remained absent. Sufficient time was given to Second party union to prove their case. On the other hand management has led their evidence. It remained unchallenged. Therefore I hold that the second party union failed to prove their case by leading evidence. Thus the reference deserves to be dismissed. Hence I proceed to pass the following order:

ORDER

The reference stands dismissed with no order as to cost.

Date: 27.03.2015

K.B. KATAKE, Presiding Officer

नई दिल्ली, 6 मई, 2015

का.आ. 1004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन आयल कारपोरेशन लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, धनबाद के पंचाट (संदर्भ संख्या 58/2006) प्रकाशित करती है जो केन्द्रीय सरकार को 27/4/2015 को प्राप्त हुआ था।

[सं. एल-30011/13/2006-आई आर (एम)]
जोहन तोपनो, अवर सचिव

New Delhi, the 6th May, 2015

S.O. 1004.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. I.D. No. 58/2006) of the Central Government Industrial Tribunal/Labour Court 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Oil Corporation Limited and their workman, which was received by the Central Government on 27/4/2015.

[No. L-30011/13/2006-IR(M)]
JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT

Shri Kishori Ram,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 58 OF 2006

Parties : The Dy. General Secretary,
B.T.M.U., Suraj Bhawan, Refinery Township Begusarai

Vs.

The Exec. Director,
Indian Oil Corporation Ltd., Refinery Division
Barauni Refinery, Begusarai-851114 (Bihar).
Order No. L-30011/13/2006-IR(M) dt. 24.08.2006
& 26.11.2007

APPEARANCES:

On behalf of the workman/Union : Mr. V.N. Sahay
Ld. Advocate

On behalf of the Management : Mr. K.N. Gupta,
Ld. Advocate

State : Bihar

Industry : Petroleum & Natural Gas

Dated, Dhanbad, the 26th March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-30011/13/2006-IR(M) dt. 24.08.2006 & 26.11.2007.

SCHEDULE

"Whether the action of the Management is justified in not providing employment to the next of kin of Shri Ugandeo Choudhary & if not, what relief the workman is entitled to?"

On receipt of the Order No. L-30011/13/2006-IR(M) dt. 24.08.2006 & 26.11.2007 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi, for adjudication of the dispute, the Reference Case No. 58 of 2006 was registered on 21.09.2006 and accordingly an order to that effect was passed to issue notices through the Registered posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Workman and the O.P./Management through their Ld. Advocates appeared respectively, and contested the case.

2. The case of the workman Ugandeo Choudhary as sponsored by the BTMU, Begusarai, is the workman, an employee of the Management of the Indian Oil Corporation, Barauni Refinery under the M/s Indian Oil Corporation, a Public Sector, met an accident on 01.10.2001 while going from Refinery Township to Factory for duty on bicycle which was dashed by an unknown Vehicle. On his report to Refinery Hospital on the same day for treatment, the Doctors Diagnosed his case intra-capsular fracture of right

femur neck. Considering his condition serious, he was referred by the Refinery Doctors to Kurjee Holy Family Hospital, Patna where he was under treatment therefrom, he was referred by the Refinery Doctor to Sri Ganga Ram Hospital, Delhi, wherefrom without any fruitful result, he was discharged. The workman represented in his application on 18.07.2002 to the Management, that the Doctor had declared him totally permanent disabled. He also submitted his application to the Executive Director in the prescribed form of the Company for appointment of his dependant son/daughter on the ground of his permanent 100% total disablement under clause 3(b) of the Tripartite Agreement dated 19.1.1989 (Annexure 1) and the Rehabilitation Scheme. But the Management did not consider it, though Ram Kumar Rai, S/o Raj Dev Rai and C.B. Mishra were employed under the Rehabilitation Scheme in the last five years as per the said agreement. It is also alleged it a violation of Article 14 of the Constitution of India and the Tripartite Agreement. The workman already retired from service on 30th June, 2005. Even then, no medical and other benefits were made available to him. The Memorandum of Settlement under the Rehabilitation of the Family of the workman dying/suffering permanent total disablement during service provides for an option for employment of his ward eligible suitable and dependant son/daughter. Hence the Industrial Dispute arose.

3. The Representative Union in its rejoinder on behalf of the workman has also categorically denied the relevant allegations of OP/Management as incorrect, further stating the Management had not been discharging the legal liability as per the law. When the management was informed about the accident, it took not any steps for payment of compensation under the Compensation Act, 1923; the workman filed a case for compensation which was a separate claim independent of the present Reference. The workman had informed of the Management about his total disablement as per his letter dt. 18.07.2002. The Management had provided the Medical treatment to him even at Delhi.

4. Whereas the contra pleaded case of the OP/Management is that the Reference being unrelated to the Indian Oil Corporation, Barauni Refinery not maintainable, though later on, as per corrigendum of the Under Secretary concerned, it has been added the IOCL, Refinery Division, Barauni Refinery as a party to it as per letter dt. 26.11.2007. Even then the Reference is not maintainable in facts and law as well. The case of the workman Ugandeo Choudhary never came under the category of total permanent disablement. Factually, the Barauni Refinery Management being a Public Sector of the Government of India has been complying the provisions of the Law of the Land just as in the terms of Tripartite Agreement dt. Jan. 19, 1989, by implementing the scheme of Rehabilitation of the family of the workman dying or suffering permanent total disablement due to an injury arising out of and in course of employment

while in service. The workman had also filed the case No. WC:07/2006 before the Dy. Labour Commissioner-cum-Workman Compensation Commissioner, Mungyr Division, Begusarai, for compensation under the Compensation Act, 1923. Sri Sitaram Choudhary, S/o workman had also filed a Writ application before the Hon'ble High Court, Patna, in respect of his appointment under the Scheme of the aforesaid Rehabilitation. As per the Memorandum of Settlement known as "Superannuation Benefits Fund Scheme" arrived on Jan. 19, 1989 between the IOCL, Barauni and Barauni Tel Sodhak Mazdoor Union. There is also a provision for rehabilitation of the family of the workman dying/suffering permanent disablement due to an injury arising out of/in course of employment while in service. One of the Rehabilitation options is for employment of otherwise eligible, suitable and dependant son/daughter (Annexure-D). Further alleged is that the workman who joined his service on 13.09.1969 in the regular scale of Barauni Refinery, retired at his sixty years from the service of corporation on 30.06.2005 as per the policy of the Corporation.

5. The workman is alleged to have informed the Management as per his letter dt. 18.07.2002 after more than nine months (Annexure-E) about his accident to have taken place near Bio-treatment plant of Barauni on 1st Oct., 2001 while going on bicycle from Refinery Township about seven Kms. away to the refinery for duty due to dash by unknown Vehicle at about 1.45 p.m., seeking employment for his son under the Scheme of the Corporation on the ground of his permanently disablement. But he had not submitted any documentary/legal proof of it with details of its time and place, nor any FIR usually required in such accident. Even he had not reported the First Aid Centre of Refinery nearer (less than half kilometer) to the alleged place of occurrence. In fact, the workman was absenting from duty without any intimation from 28.09.2001 to 01.10.2001 (the date of alleged accident); the Certified Standing Order of the Barauni Refinery under its Clause 5 (a) applicable to the workman lays down:

"Any employee who meets with an accident in course of his employment shall immediately report the accident, however, slight it may be, to his Sectional/Departmental Head who shall arrange to him at once to the Company's first Aid Station for such treatment as may be necessary."

However, the workman did not abide by the rules governing his service in the Corporation and subsequently, he filed it to take unfair and under advantage of it. However, the workman as per the Medical rules of the Corporation was also provided the required Medical treatment as per the Medical record of the Corporation, the workman reported to the Refinery Hospital on 01.10.2001 without mentioning the time of his reporting. The Doctor diagnosed his case as intra capsular fracture neck of right femur, and referred to Kurjee Holy Family Hospital, Patna, for further treatment. In spite of specialized best medical treatment

provided to Shri Choudhary at Delhi and Patna, whenever required during his service period, ever since his alleged accident claim till his retirement on 30.06.2005, he did not join his duty even after Doctor's advice for treatment and rest. Provision of medical facility is a welfare measure provided as per rule of the Corporation having been granted on the ground of the clinical note of Doctor's advice for treatment/rest does not justify the claim of the workman. The Reference letter of Barauni Refinery Hospital and the letter dt. 21.12.2004 to join his duty as Annexure-H series are attached. There was nothing on the record to show any causal connection between his alleged accident and his employment, as he had been absenting since 28.09.2001 without any intimation. Neither the claim of the workman arose for the alleged accident nor any liability can be fastened against the Management, as the alleged personal injury was not a cause to the workman by an accident arising out of and in course of employment. Thus, the claimed accident does not come even under purview of Workman's Compensation Act, 1923.

6. Further it is alleged that even after his retirement from 30.06.2005 till the date, his staying in the Corporation's Quarter unauthorizedly despite repeated advice for vacating it also shows his conduct and intention to get undue advantage (Annexure-I). The Memorandum of Settlement provides for pension to the retired employee, but despite frequent advice for submissions of the forms duly filled in process of pension, *i.e.*, superannuation Benefits Fund Scheme, Medical Facilities Self and spouse under post retirement Medical Attendance Scheme, he did not submit the same perhaps in order to strengthen his case. The workman is also eligible for another pension under the Employees Pension Scheme-1995, PF amount at his credit, Superannuation Award of 25 grams Gold Coin (24 ct) etc. The Gratuity Amount due to him has been released into his Bank Account but the Management in lack of his necessary forms, declaration and nomination could not release the aforesaid Benefits unless and until they are submitted by the workman. The aforesaid settlement at point 3 prescribes: "No provision of this Scheme will be deemed to constitute any claim/right, entitlement on the part of any body". There is no rationale of the aforesaid accident claim, as such the management can not be held liable for providing an employment under the Tripartite Agreement dated 19th Jan., 1989.

FINDINGS WITH REASONS

7. In the instant reference, WW1 Asutosh Kumar Singh, the Union Representative, WW2 Jitendra Kumar, the third son of the workman concerned on behalf of the Union, and MW1 Ritesh Kumar, the Sr. Employee Relation Officer (SERO) of Barauni Refinery, for the Management have been respectively examined.

Mr. V.N. Sahay, Ld. Counsel for the Union/workman has strenuously submitted that the workman Ugandeo

Choudhary was an employee of the Management of Indian Oil Corporation, Barauni Refinery; while he was going by a bicycle from refinery Township to Factory to join his duty on 01.10.2001, he met with an accident due to dash by unknown Vehicle; he was hospitalized immediately in the Refinery Hospital for treatment, and the Doctors diagnosed his case of "Intra capsular fracture of neck of right femur", so considering his case serious, he was referred by the Refinery Doctor to the Kurjee Family Hospital, Patna, wherefrom he was referred to Sri Ganga Ram Hospital, New Delhi, due to no improvement in his condition; even after his medical treatment from 01.10.2001 to 09.07.2006, he was unable to perform his duty as per the Certificate issued by Sri Ganga Ram Hospital about his inability to walk, advising for minimum exertion and sedentary life style resulting in his permanent total disablement (Extt. W.1/1 & 1/7). But the former Certificate dt. 30.09.2001 (Ext. WVI) prima facie appears to be issued by the Medical Officer, State Dispensary Nagdah, Begusarai (Govt. of Bihar) for his only three days' treatment from 28.09.2001. None of the Certificates certifies the total disablement of the workman concerned as contended by Mr. K.N. Gupta, Ltd. Advocate for the OP/Management.

It is also further submitted on behalf of the workman that the workman had informed the Management as per his letter dt. 8.07.2002 (Ext. W.2) that he had become total disabled in spite of his specialized treatment provided by the Management, so he had urged for the employment of his son as per the Tripartite Agreement (Rehabilitation Scheme for the family of the workman) dt. 19.1928 (Ext.M.1) which lays down under its para 5 & 6 "workman dying and suffering from permanent total disablement while in service, female spouse and dependant Male spouse may opt within six months; employment of eligible son/daughter must be sought within six months of the death or permanent total disablement of the workman in a prescribed format, employment under scheme will offer within a period of three years, but the OP/Management on his application for appointment of his dependant ward violated the aforesaid clauses of the Tripartite Agreement, though the Management had provided such employment 17 wards of the other workmen in the last five years, who either died or became total permanent disabled during their service periods under aforesaid Rehabilitation Scheme. It is also alleged on behalf of the workman that Management had tried to convert the case under the Workmen Compensation Act, not offering any employment by denying their liability beyond the scope of the said agreement; in spite of full knowledge of all along treatment to the workman by the Management at their expenses from Patna to New Delhi no case of his absence from duty from the date of his accident could be made out, and that in course of the harassment to the totally disabled workman for long years, he lastly died on 11.1.2014 and his first son had pre-deceased on 25.1.2012, so his second son is eligible for appointment under the said Agreement; under

such circumstances the OP/Management can not discriminate the workman as contrasted with the other employees whose wards were given employment in the similar situations. Lastly, Mr. Sahay, the Learned Counsel for the workman has acknowledged that the withdrawal of the CWJC No. 9985/2006 by the workman on 13.02.2014 which was accordingly dismissed.

8. On the other hand, in quite denial to the alleged occurrence of the accident as concocted, Mr. K.N. Gupta, Ld. Advocate, for the OP/Management has contended that alleged accident is said to have taken place on 01.10.2001 but for the first time the information was given on 18.07.2002 (Ext. M.2). There is no FIR of it. The place of the accident is just half Km. away from the Refinery Gate, but none gave any information about the accident. Neither of two witnesses; MW1 Ashutosh Kumar Singh, the Union Representative and WW2 Jitendra Kumar, the third son of the workman Ugandeo Choudhary, could admittedly have an occasion to see any accident nor an independent witness could be examined in discharging the onus of proof at the point. Mr. Gupta has emphatically to submit that the Superannuation Fund Scheme (In short the Scheme) (Annexure I) to Memorandum of Settlement dt. 19.01.1998 (Ext.M.1) was meant for the Rehabilitation of the family of the workman dying or suffering a permanent total disablement (in short PTD) due to an injury arising out of and in course of employment while in service; the option-3 of the Rehabilitation is also for employment of otherwise eligible suitable and dependent son/daughter, but in the instant case, the workman joined the service on 13.09.1969 and continuously remained in service till his retirement from his service on 30.06.2005 at his superannuation age. The workman had, as submitted by Mr. Gupta, also filed his claim application WC Case No. 7/06/4/06 under the Workmen Compensation Act, before the Labour Court, Begusarai, for compensation of Rs. 3,10,680/- based on the same ground of his personal injury out of the accident allegedly arising out of and in course of his employment resulting in his permanent Total disablement.

Mr. Gupta has argued that the workman allegedly to have become a Permanent Total Disablement during the employment in one case and he pleaded his PTD (Permanent Total Disablement) due to the accident arising out of an accident during the course of employment in another case; as such the claim of the workman is directly contradictory as well as over doubtful. In the instant case, no nexus between the accident and the employment of the workman has been established by the workman; neither the road accident to the employee on way to his employment said to have its origin in dashing by unknown Vehicle in his employment in the factum can be presumed, nor any of the relevant Certificates of the workman proves his loss of 100% earning capacity or Permanent Total Disability; moreover the workman has availed almost all of his retrial

benefits. Further contention of Mr. Gupta is that the workman as employee was provided medical treatment while in his service till 30.06.2005 as per the Medical Rules of the Corporation; despite his Medical Certificates not justifying his unfitness to join his duty, the workman did not join his duty even at the advice of the OP/Management. Mr. Gupta has submitted the instant case has no proof of any discrimination with the workman as contrasted with the other employees of the Corporation, as the Settled principle is that the discrimination arises when two are equal but the workman failed to produce or prove of any document to that effect specifically even apart from non-examination of the workman himself; and lastly likewise not any economic crisis of the workman on account of his PTD (Permanent Total Disablement) has been proved; besides residing of his family in the Refinery Quarter, availing of all the facilities thereof without any payment of rent since long contrary to the Refinery's rules makes the family of the workman liable to pay penal rent; under these circumstances, the Management is in no way liable to provide any relief of employment to the dependent son of the workman.

9. On perusal and consideration of all the materials on the case record, I find that the existence of workman Ugandeo Choudhary as the employee of the OP/Management appears to be beyond any dispute. It also appears no doubt that the two cases: the CWJC No. 9985/2006 filed by Sita Ram Choudhary, (now deceased) son of the workman, before the Hon'ble High Court, Patna and the Case No. WC 4/06 by the workman before the Labour Court, Begusarai, for compensation under the Workmen's Compensation Act, 1923 have been filed on the same ground of alleged Medical Treatment and claim for employment for his son as in the instant Reference. But later on, the said Writ petition was dismissed as withdrawn on 13.12.2014 by the Hon'ble High Court, Patna, as submitted by the Learned Counsel for the workman. In the instant reference, there was neither F.I.R. nor any information by the workman to the OP/Management about his accident taken place on 01.10.2001, rather the application of the workman dt. 18.07.2002 (after more than nine months) (Ext. W.2) to the Executive Director, Barauni Oil Refinery, Begusarai is about the said accident as well as for consideration of his ward Sita Ram Choudhary's employment under the Rehabilitation Scheme as per his dateless application (Ext.W.2/1) which was also unwitnessed, nor supported with any substantial documents. None of the Medical Certificates (Extt. W.1/2 dateless and W.1/7 dt. 19.07.2006) establishes the Permanent Total Disablement (PTD) of the workman, rather the Medical Certificate (Ext.W1/2) issued by the Kurji Holy Family Hospital, Patna refers the advice to the workman to walk without walking stick. Moreoever the Certificate dt. 30.09.2001 (Ext.W1/1 issued by the Medical Officer, Dispensary, Nagdah, Begusarai (Government of Bihar) denotes the only three days treatment of the workman there

from 28.09.2001 earlier than the alleged occurrence. It makes the case of the workman vague, hence doubtful.

10. The acknowledged fact is that in process of his such claim for employment of his ward on the alleged ground of his Permanent Total Disablement (P.T.D.) the workman retired from service on 30.06.2005, after which he was paid almost all dues including his gratuity, and later on, he expired on 11.01.2014. So far as alleged accident to the workman is concerned, there is no proof of it resulting in his Permanent Total Disablement (commonly known as PTD), which is the pre-requisite for the employment of his ward under the aforesaid Scheme. Moreover, the words "Arising out of and in the course of his employment" indicate, as held by the hon'ble Apex Court in the case of Regional Director, E.S.I. Corp. Vs. Francis De Costa, (1996) 6 SCC. 1, 6. that any accident which occurred while going to the place of employment or for the purpose of employment, cannot be said to have arisen out of his employment, there being no causal connection between the accident and the employment.

Considering all the aforesaid factum and legum of the case, it is awarded that the action of the Management of Barauni Oil Refinery, Begusarai, is quite justified in not providing employment to the next of kin of workman Ugandeo Coudhary. So, the workman neither was nor is entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 6 मई, 2015

का.आ. 1005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच०पी०सी०एल० बायोफुएल्स लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, धनबाद के पंचाट (संदर्भ संख्या 42/2014) प्रकाशित करती है जो केन्द्रीय सरकार को 27/4/2015 को प्राप्त हुआ था।

[सं० एल-30011/13/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi, the 6th May, 2015

S.O. 1005.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. No. 42/2014) of the Central Government Industrial Tribunal/Labour Court 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HPCL Biofuels Limited and their workman, which was received by the Central Government on 27-4-2015.

[No. L-30011/13/2014-IR(M)]

JOHN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

PRESENT

Shri Kishori Ram
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I.D. Act., 1947.

REFERENCE NO. 42 OF 2014

Parties : The President

Bihar Sugar Workers Federation,
Boring Road, Pani Tanki. Distt:Patna,
Vs. The General Manager,
HPCL Biofuels Ltd.
Lauriya, Bettiah, Bihar.
Ministry Order No. L-30011/13/2014-IR(M)
dt.11-8-14.

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : Mr. R. K. Tiwari,
Ld. Advocate

State : Bihar

Industry : Petroleum & Natural Gas

Dated, Dhanbad, the 2nd March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No.-L-30011/13/2014-IR(M) dt. 11.08.14.

SCHEDULE

"Whether the action of the management of HPCL Biofuels Ltd., Lauriya to transfer the services of 235 workmen from the muster roll of the Company to the roll of the Contractor M/s Sugauli Chini Mill Shramik Swawlambi Sahkari Samiti, Lauriya is valid? If not, what relief the workman are entitled for?"

2. Mr. R.K. Tiwari, Ld. Advocate for the OP/Management's present but none appeared on behalf of Bihar Sugar Workers Federation/workmen. Mr. Tiwari, Ld. Advocate for the OP/Management submits that in view of the joint petition filed on 09.02.2015 on behalf of the both the parties under the signatures of the President of the Bihar Sugar Works Federation, Patna and the General Manager, R.K. Mishra, for passing a 'No Dispute award' as both the parties have amicably resolved this dispute as referred for an adjudication.

On perusal of the case record, I find that since both the parties have amicably settled their dispute by filing a joint petition under the signatures of both the representatives, so there is no longer an Industrial Dispute; hence, it is closed as "no Industrial Dispute"; and accordingly it is passed an No Dispute Award.

KISHORI RAM, Presiding Officer

नई दिल्ली, 6 मई, 2015

का.आ. 1006.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एच०पी०सी०एल० बायोफुएल्स लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय 2, धनबाद के पंचाट (संदर्भ संख्या 43/2014) प्रकाशित करती है जो केन्द्रीय सरकार को 27-04-2015 को प्राप्त हुआ था।

[सं० एल-30011/12/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi the 6th May, 2015

S.O. 1006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the award (Ref. I.D. No. 43/2014) of the Central Government Industrial Tribunal/Labour Court 2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of HPCL Biofuels Limited and their workmen, which was received by the Central Government on 27-04-2015.

[No. L-30011/12/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT:

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947.

REFERENCE NO. 43 OF 2014

Parties : The President

Bihar Sugar Workers Federation,
Boring Road, Pani Tanki. Distt:Patna,

Vs.

The General Manager,
HPCL Biofuels Ltd.
Sugauli, East Champaran (Bihar)
Ministry Order No. L-30011/12/2014-IR(M)
dt.13-8-14.

APPEARANCES:

On behalf of the workman/Union : None

On behalf of the Management : Mr. R. K. Tiwari,
Ld. Advocate

State : Bihar

Industry : Petroleum & Natural Gas

Dated, Dhanbad, the 2nd March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No-L-30011/12/2014-IR(M) dt. 13.08.14.

SCHEDULE

"Whether the action of the management of HPCL Biofuels Ltd., Sugauli to transfer the services of 235 workmen from the muster roll the Company to the roll of the Contractor M/s Sugauli Chini Mill Sharmilk Swawlambi Sahkari Samiti, Sugauli is valid? If not, what relief the workman are entitled for?"

2. Mr. R.K. Tiwari, Ld. Advocate for the OP/ Management of HPCL Bio-Fuel Ltd., Sugauli, East Champaran (Bihar), but none appeared on behalf of the President of Bihar Sugar Workers Federation/workmen, Patna. Mr. Tiwary by drawing my attention, to the joint petition filed on 09.03.2015 on behalf of the both the parties, submits that since both the parties as per the joint petition under the signatures of Ratan Shankar Jha, the General Manager of the Management and the President concerned of the aforesaid Federation have amicably settled the dispute in issue, so there is no dispute; hence it may be passed as 'No Dispute Award' in this case.

On perusal of the case record, I find the reference relates to an issue over the transfer of services of 235 workmen from the Muster Roll of the Company to the roll of the Contractor M/s Sugauli Chini Mill, Sharmilk Swawlambi Sahkari Samiti, Sugauli which which appears to have been resolved amicably by both the parties. Under these circumstances, it is not longer an Industrial Dispute; hence it is passed an No Industrial Dispute existing.

KISHORI RAM, Presiding Officer

नई दिल्ली, 6 मई, 2015

का.आ. 1007.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एयरपोर्ट अथॉरिटी ऑफ इंडिया एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट

(संदर्भ संख्या 43/2014) प्रकाशित करती है जो केन्द्रीय सरकार को 27-04-2015 को प्राप्त हुआ था।

[सं. एल-11011/2/2014-आई आर (एम)]

जोहन तोपनो, अवर सचिव

New Delhi the 6th May, 2015

S.O. 1007.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. I.D. No. 43/2014) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Airport Authority of India and their workmen, which was received by the Central Government on 27-04-2015.

[No. L-11011/2/2014-IR(M)]

JOHAN TOPNO, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 43 of 2014

Parties: Employers in relation to the management of Airport Authority of India

AND

Their workmen.

Present: Justice Dipak Saha Ray, Presiding Officer

Appearance:

On behalf of the : Mr. Sushil Kumar Karmakar, Ld. Management Counsel for Airport Authority of India. Mr. Rahul Ghosh, Ld. Counsel for M/s. Bhadra International India Ltd.

On behalf of the : None. Workmen

State : West Bengal Industry : Civil Aviation

Dated: 9th April, 2015

AWARD

By Order No. L-11011/2/2014-IR(M) dated 16.05.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication.

"Whether the demand of the Union for ex-gratia/bonus @ 20% on the management of M/s. Bhadra International contractor of Airports Authority of

India, Kolkata is legal and/or justified? if not, what relief the workmen are entitled?"

2. When the case is taken up for hearing today, Lt. Counsel for the Director, Airports Authority of India, NSCBI Airport, Dum Dum is present, M/s. Bhadra International India Ltd. Also Appears through its Lt. Counsel but none appears on behalf of the General Secretary, NSCBI Airport Casual & Contractual Workmen's Union even this day in spite of service of notice, It appears from the record that the union never appeared in this case.

3. Considering the conduct of the union, it may reasonably be presumed that the union is not all interested to proceed with this case. So, No fruitful purpose will be served by keeping the matter pending further.

4. In such view of the matter, present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHA RAY, Presiding Officer
Dated: Kolkata,

The 9th, April, 2015.

नई दिल्ली, 7 मई, 2015

का.आ. 1008.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/ श्रम न्यायालय अरूनाकुलम के पंचाट (6/2013) प्रकाशित करती है जो केन्द्रीय सरकार को 27-05-2015 को प्राप्त हुआ था।

[सं. एल-35011/3/2012-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. 6/2013) of the Central Government Industrial Tribunal-Cum-Labour Court, Ernakulam as shown in the Annexure in the Industrial Dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 27-04-2015.

[No. L-35011/3/2012-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Friday, the 19th day of December, 2014/28th
Agrahayana, 1963)

ID 6/2013

Union : The General Secretary
 Cochin Port Staff Association
 Wellington Island
 Cochin-682009
 By M/s. A.V. Xavier

Management : The Chairman
 Cochin Port Trust
 W/Island
 Cochin-682009
 By M/s. B.S. Krishnan Associates

This case coming up for hearing on 18.12.2014 and this Tribunal-cum-Labour Court on 19.12.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour as per Order No-L35011/3/2012-IR(B-II) dated 07.12.2012 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the action of the management of Cochin Port Trust in denying special casual leave as per Central Govt. Rules to its employees on the days when there was breakdown of public transport system due to bandh etc., is legal and justified? What relief the employees are entitled to?"

3. After submission of pleadings by both parties the case was posted in the Lok Adalath as agreed to by them. There was a full and final settlement of the dispute and a compromise was filed jointly by both the parties. There is nothing illegal in accepting the compromise. Hence the compromise is accepted and an award is passed in terms of the compromise. The compromise will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 19th day of December, 2014.

D. SREEVALLABHAN, Presiding Officer

**BEFORE THE CENTRAL GOVERNMENT
 INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
 ERNAKULAM**

I.D. No. 6 of 2013

Cochin Port Trust : Management
 Cochin Port Staff Association : Union

The Matter was taken up in Lok-Adalath and the parties agreed to settle the dispute on the following terms.

1. The management agrees to grant Special Casual Leave to the following persons on 2.3.2010 :—

1. 4320	N. Pradeep Kumar, Dy. Chief Acctt.
2. 7174	Rugmini K, Sr. Acctt.
3. 2747	K. Valsalakumari, Sr. Acctt.
4. 5858	T.R. Kunjappan, Sr. Acctt
5. 5564	P.P. Geetha, Acctt.
6. 7817	C.F. Elizabeth, Acctt.
7. 9540	K.A. Xavier, Acctt.
8. 7059	P.K. Karunanidhi, Acctt.
9. 122	V. Padmajakumari, Sr. Acctt.
10. 5082	C.N. Baby, Sr. Acctt.
11. 7197	Saheeba, M.V. Sr. Acctt.
12. 7602	T.C. Thambi, Sr. Acctt.
13. 739	M.P. Geethakumari, Sr. Acctt.
14. 7650	V. Sudhakaran, Acctt.
15. 8018	B.A. Sangeetha
16. 596	V.B. Ganga Devi, Manager
17. 4533	Merlin L. Lopez. Sr. Acctt.
18. 4350	Elizabeth K. Paul, Acctt.
19. 13087	Shammy Rose T.X. Acctt.
20. 7981	Suma Sachit K. Acctt.
21. 7002	K.V. Sasi, J.E. (M)
22. 3121	K.S. Mary Manager
23. 9020	T.S. Vinoy, Acctt.
24. 7149	M. Bihin, MM

2. The Management agrees to grant Special Casual Leave to the following persons on 27.4.2010 :—

Sl. No. Staff No. Name & Designation

1. 616	V.R. Ravindran Pillai, Gl. Supervisor
2. 5731	C.R. Vijayalakshmi, Sr. Acctt.
3. 7353	M. Rajasree, Acctt.
4. 9074	Smitha N. Chellappan, Acctt.
5. 4322	P.K. Shahul Hameed, Acctt.
6. 555	A.P. Vijayan, Manager
7. 732	V.M. Mary, Sr. Acctt.
8. 113	K.S. Aleyamma, Sr. Acctt.
9. 7963	P.V. Vary, Acctt.

10.	829	T.A. Syrabanu, Acctt.	50.	12032	Susan Varghese, Hindi Translator	
11.	9640	K. Lathika, Steno Gr. I	51.	7174	Rugmini K., Sr. Accountant	
12.	574	P.A. George, Manager	52.	2747	K. Valsalakumari, Sr. Acctt.	
13.	550	Philip Bency, Manager	53.	7059	P.K. Karunanidhi, Acctt.	
14.	3354	T.K. Padmanabhan, Sr. Acctt.	54.	9785	T.K. Sivankutty, Acctt.	
15.	5075	K.P. Grika, Sr. Acctt.	55.	4279	Smt. Latha Bai, Steno (S.G)	
16.	5033	V.B. Girija Devi, Sr. Acctt.	56.	5082	C.N. Baby, Sr. Acctt.	
17.	2372	T.S. Usha, Acctt.	57.	7602	T.C. Thambi, Sr. Acctt.	
18.	641	Faustine peter, Acctt.	58.	5512	T.N. Suresh	
19.	12021	M.R. Sunilkumar, Acctt.	59.	8018	B.A. Sangeetha	
20.	12041	K.S. Manoj, Acctt.	60.	7105	T.V. Mohankumar, Acctt.	
21.	642	A. Vijayam, R/Asstt.	61.	596	V.B. Ganga Devi, Manager	
22.	15053	T.R. Sreedevi, UDC	62.	4533	Merlin L.Lopez, Sr. Acctt.	
23.	9090	V.P. Sindhu, Statistical Asstt.	63.	4350	Elizabeth K. Paul, Acctt.	
24.	185	V.G Padmajam, Acctt.	64.	13087	Shammy Rose T.X. Acctt.	
25.	5548	M.J. Stella, R/Asstt.	65.	7981	Suma Sachit K, Acctt.	
26.	5040	A.S. Latha, Acctt.	66.	167	C.V. Surendran, G/S	
27.	190	B.K. Mrithunjayan, Acctt.	67.	3121	K.S. Mary, Manager	
28.	736	T.K. Anilkumar, Acctt.	68.	9020	T.S. Vinoy, Acctt.	
29.	592	T. Mumtas, Sr. Acctt.	69.	7130	A.M. Siraj Hussain, Acctt.	
30.	5057	M.K. Santhakumari, Manager	70.	7618	E.G. Xavier, Electrician HSK	
31.	6919	P.K. Sindhu, R/Asstt	3. Both the parties hereby agrees that no person, other than those mentioned above, will be entitled for the benefit of this settlement.			
32.	4213	M.S. Mariamma, Acctt.	4. Both the parties hereby agree that the terms of this settlement shall not be treated as a precedent, under any circumstances. It is also agreed that the terms of this settlement shall not affect in any manner the terms and conditions of the circular No. Secy/5/2011/S dated 13.6.2011. It is also agreed between the parties that no person shall use the terms of this settlement, in any manner, in any further demand/dispute.			
33.	9581	A.A. Arifa, Hd. Sweeper	5. Union hereby agrees that they are fully satisfied with the terms and conditions of this settlement and shall not make any further claim with respect to the above dispute.			
34.	843	T.V. Subramanian, Gl. Supervisor	6. Both the parties hereby to pass an award in the above dispute, in terms of this settlement.			
35.	3147	P.A. Sebastine Agustine, Sr. Acctt.	Dated this the 18th day of December 2014.			
36.	9830	P.G. Mohanan, Acctt.	Union Sd/- Management Sd/- Counsel for the union Sd/- Counsel for the Management Sd/- Sd/-Mediator			
37.	4321.	C.P. Rajee, L/Asstt.				
38.	0082	V.N. Muraleedharan, Steno (SG)				
39.	126	Antony John Correa, Acctt.				
40.	5851	K. Pnakajakshi, Manager				
41.	3359	Radha Pattalur, Sr. Acctt.				
42.	830	P.G. Suresh, Acctt.				
43.	173	C.K. Girijappan, Gl. Supvr				
44.	5042	I.E. Xavier, Acctt.				
45.	7864	P. Vanajakumari, Sr. Acctt.				
46.	575	Susamma P.O. Oomman,				
47.	7023	A.A. Sherly Margarat, Acctt.				
48.	15066	T.H. Sulfath, LDC				
49.	189	M. Rajalakshmi, Sr. Hindi Translator				

नई दिल्ली, 7 मई, 2015

का.आ. 1009.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय अरुनाकुलम के पंचाट (संदर्भ सं 14/2013) प्रकाशित करती हैं जो केन्द्रीय सरकार को 07.05.2015 को प्राप्त हुआ था।

[सं एल-35011/01/2012-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1009.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 14/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 07/05/2015.

[No. L-35011/01/2012-IR (B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Wednesday the 25th day of March, 2015/04th
Chaitra, 1937)

ID 14/2013

Union : The General Secretary
Cochin Port Trust Staff Association
Wellington Island
Cochin-682009

Additional Parties : 1. Smt. Bhasini
W/o Late Samikutty Nandanam
Chembakaserry Parambu
Nedungadu Nayarambalam PO
Pin-682509
2. Smt. C.S. Nisamol
W/o Shri Aneesh KV Narikolly,
Ambalamula PO
Presently residing at Nandanam
Chembakaserry Parambu
Nedungadu
Nayarambalam PO, Pin-682509

(Union and Addl. Parties 1 & 2- By M/s. A. V. Xavier)

Management : The Chairman
Cochin Port Trust
W/Island, Cochin, COCHIN
By M/s B S Krishnan Associates

This case coming up for final hearing on 18.03.2015 and this Tribunal-cum-Labour Court on 25.03.2015 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour *vide* its Order No.-L-35011/01/2012-IR(B-II) dated 04.02.2013 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

'Whether the action of the management of Cochin Port Trust in not considering the grievance of Shri C. Smaykutty for pay equivalent to the pay of his junior is justified? What relief he is entitled to?'

3. On receipt of summons the union and the management entered appearance and submitted their respective pleadings. During the pendency of the proceedings the workman died and his legal representatives were impleaded at the instance of the union as additional parties 1 and 2 *vide* order dated 18.02.2015 on IA 33/2015.

4. After submission of pleadings by both parties the ID was posted in the Lok Adalath for an amicable settlement. It was settled between the parties and a compromise petition was jointly filed by the union and the management along with the legal heirs of the deceased workman. As there is nothing illegal in accepting the compromise an award is passed in terms of the compromise which will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 25th day of March, 2015.

D. SREEVALLABHAN, Presiding Officer

APPENDIX-NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID No. 14 of 2013

The General Secretary,
Cochin Port Staff Association
Wellington Island, Cochin-682009 ...Petitioner/Union

Vs

The Chairman, Cochin Port Trust,
Wellington Island, Cochin-682009 ...Management

The matter was taken up in Lok Adalath and the parties agreed to settle the dispute on the following terms.

1. The management agrees to pay the difference of Rs. 410/- in the family pension, by notionally equalizing the pay with that of Shri P.V. Babu, by revising the Family Pension of (late) Shri. Samikutty, at Rs. 17,845/- (Rupees Seventeen thousand eight hundred and forty five only) within one month from the date of publication of this award.

2. The management agrees to pay the said difference of Rs. 410/- from the date of his death.

3. Smt. Bhasin, w/o late Shri Samikutty and Smt. C. S. Nisamol, D/o late Shri Samikutty, who are the only legal heirs of late Shri Samikutty and the Union and agrees that they are fully satisfied with the terms and conditions of this settlement and shall not make any further claim with respect to the above dispute and shall not make any claim for back arrears with respect to the arrears of salary of (late) Shri Samikutty, due to pay equalization.

4. All the parties hereby agree to pass an award in the above dispute, in terms of this settlement.

Dated this the 11th day of March, 2015

Union: Sd/-

Management: Sd/-

Counsel for the union: Sd/-

Counsel for the Management: Sd/-

Smt. Bhasini Sd/-
(Additional Claimant No. 1)

Smt. C.S. Nisamol Sd/-
(Additional claimant No. 2) Counsel for Additional
Claimant Nos. 1 and 2: Sd/-

Sd/-
Mediator

नई दिल्ली, 7 मई, 2015

का.आ. 1010.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑवरसिज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय अरूनाकुलम के पंचाट (संदर्भ सं 2/2011) प्रकाशित करती है जो केन्द्रीय सरकार को 07.05.2015 को प्राप्त हुआ था।

[सं. एल-12012/58/2010-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 2/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the

management of Indian Overseas Bank and their workmen, received by the Central Government on 07/05/2015.

[No. L-12012/58/2010-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Thursday the 28th day of August, 2014/06th Bhadrapada, 1936)

ID 2/2011

Workman : Shri M Shajeevan
S/o Bhaskaran
Puthuvayalil House.
Post West Hill, CALICUT-5
By Adv. Shri C. Anil Kumar

Management : The Regional Manager
Indian Overseas Bank
Cherootty Road
CALICUT-673001

By Adv. Shri George Varghese

This case coming up for final hearing on 20.08.2014 and this Tribunal-cum-Labour Court on 28.08.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour *vide* its Order No.-L-12012/58/2010-IR(B-II) dated 09.12.2010 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the action of the management of Indian Overseas Bank in not regularizing the services of Shri M. Shajeevan in the post of and his subsequent termination from its services 26.12.2008 without complying with the provision of ID Act is fair and justifiable, what relief is he entitled?"

3. The allegations in the claim statement filed by the workman, in brief, are that the workman joined the services of the management bank as a temporary messenger/sub-staff on 28.5.1996 in its Calicut branch and afterwards he was assigned with that work in the Mavoor Road branch, Chevayoor branch and in the Regional Office at Calicut. He was paid daily wages after obtaining vouchers from him. He was called for an interview conducted for filling up

the vacancies for messenger/sub-staff available in the different branches of the management bank. It was held on 13.08.2008 at the Regional Office of the management bank at Calicut. He was continuing in service after the interview awaiting the result. In the meanwhile he had submitted a representation to the management on 30.10.2008 with the request for regularisation of his service. After the receipt of the representation his service was orally terminated w.e.f. 26.12.2008. He was having continuous service of 240 days in the year of his termination. The termination was effected by the management without complying with the requirements under Section 25F of the Industrial Disputes Act. At that time there were existing vacancies in various branches and in the Regional Office. Person who were junior to him were retained in service. He was fully qualified to hold the post of messenger and was having sufficient experience. Even then his service was terminated without any justifiable reason violating the mandatory provisions of the Industrial Disputes Act. Hence he is entitled for reinstatement with back wages and other consequential benefits.

4. The contentions put forward in the written statement filed by the management are that the workman was not an employee in the rolls of the management and he is not entitled to make the claims. The allegation that he had joined services of the management bank as a temporary messenger/sub-staff on 28.05.1996 and worked at various branches of the bank is baseless and incorrect. He was utilized for attending coolie work and was paid daily wages for the work through vouchers. He was called for interview but was found not suitable in the selection process. He was not continuing in service after the interview as alleged by him. There was no question of termination of his service as he was not in the service of the bank. No representation for regularisation of service was submitted by him on 30.10.2008. Merely for the reason that an employee worked for 240 days or more on daily wage basis he cannot claim regularisation of service as a matter of right. There must be need for retention of the employee according to the requirement of work. The workman was not having service or experience. The workman was engaged in some of the branches of the bank in the Kozhikode region as a coolie for cleaning the premises, shifting of all records, packing and loading of stationary etc. along with other coolies intermittently and was being paid daily on voucher. He was not engaged in any permanent vacancy or regular work. He was not in the rolls of the bank and was not signing attendance register. There is no question of termination of his employment in violation of mandatory provisions of the Industrial Disputes Act, 1947 as the engagement of a daily wager comes to an end on every day. Since the vacancies were filled up through selection process the workman was not engaged in the miscellaneous works. If he is allowed to enter the services of the bank for the reason that he had worked in the branches on adhoc basis it would amount to back door entry into the bank's

services. Hence the dispute is devoid of merits and is liable to be dismissed.

5. Workman filed rejoinder denying the contentions in the written statement and reaffirming the allegations in the claim statement.

6. For the purpose of deciding this case evidence, both oral and documentary, was adduced from either side. For the workman he was examined as WW1 and Exts. W1 to W6 were got marked. From the side of the management one witness was examined as MW1 and Exts. M1 to M4 were got marked. After closing the evidence the arguments for both sides were heard.

7. The points for determination are:

- (i) Whether the workman in this case comes within the purview of the definition of Section 2(s) of the Industrial Disputes Act?
- (ii) Whether termination of his service is to be in accordance with Section 25F of the ID Act?
- (iii) Whether the action of the management is not regularizing the services of the workman and the subsequent termination from service on 20.06.2008 is fair and justifiable?
- (iv) To what relief he is entitled to?

8. *Point No. (i):-* It is the case of the workman that he was working as a temporary messenger/sub-staff in the various branches and the Regional Office of the management bank at Calicut from 28.05.1996 onwards. After denying it management would contend that he was engaged only as a coolie on daily wage basis along with other coolies and he was not engaged in any permanent vacancy or for any regular work. There is absolutely no evidence in this case except the interested testimony of WW1 to prove that he was working as a temporary messenger/sub-staff in the management bank.

9. There is no order appointing him as messenger/sub-staff. WW1 has stated that he was appointed orally by the management. Exts. M1, M2 and M4 will go to show that he was paid coolie charges for the days he attended work. Even if it be said that he had attended the duties of a messenger/sub-staff then also it cannot be said that it was for a particular period on temporary basis. From Ext. W3 and Ext. M3 it can be seen that he was not regularly engaged by the management bank. But it can very well be held that he was engaged as a casual labour by the management bank on daily wage basis. A casual labourer will also come within the purview of the definition of workman under Section 2(s) of the Industrial Disputes Act. Hence it can be held that he is a workman coming within the definition of workman under the Industrial Disputes Act.

10. *Point No. (ii):-* Now it is to be considered whether it is necessary to comply with the procedural requirements

under Section 25F of the Industrial Disputes Act for termination of his service. As far as a casual labourer is concerned it is incumbent upon him to prove that he had worked for 240 days during the proceeding 12 months of his termination from service.

11. In the decision reported in Surendranagar District Panchayat Vs. Dahyabhai Amarsinh (2005) 8 SCC 750 it was held that the onus to prove the requirement of 240 days of continuous service lies on the workman and it is for him to adduce evidence apart from examining himself or filing an affidavit to prove the said factum.

12. In this case there is no reliable evidence to prove that he had worked for 240 days within a period of 12 months prior to the date of termination. The date of termination is stated to be on 26.12.2008. The workman has to prove that he had worked for 240 days during the period of 12 months prior to 26.12.2008. The details of the engagement during the period from October, 2007 to October, 2008 was marked as Ext. M3. The details of engagement during that period furnished to the workman was marked as Ext W3. In both those documents the number of days he had worked during October, 2007 to October, 2008 is given as 240 days. But as the termination was on 26.12.2008 the number of days is to be counted from the 12 months preceding the date of termination. The number of days he had worked in the month of November, 2008 is shown to be two days and in the month of December, 2008 to be seven days in Ext. M4. The number of days during the 12 months preceding the date of termination will not come to 240 days if it will be calculated on the basis of Exts. W3, M3 and M4. Workman has stated during his cross examination that he was engaged only for 3 to 5 days in a month and he was receiving the wages after issuing voucher. There was no regular engagement during the period of one year prior to the date of termination. There is no satisfactory evidence to prove that he was having a continuous service of 240 days the 12 months prior to the date of termination. There is no necessity to comply with the requirements under Section 25F of the Industrial Disputes Act for termination of his service. Hence it can be held that the termination of his service does not require the compliance of the requirements under Section 25F of the ID Act.

13. *Point No. (iii):-* As it is found that the workman was engaged only as a casual labourer and was not having continuous service of 240 days in a year he is not entitled to make the claim for regularisation and does not require the compliance of the provisions of the ID Act for the termination. Hence the action of the management is not regularizing his service and his subsequent termination w.e.f 26.12.2008 is fair and justifiable.

14. *Point No. (iv):-* In the result an award is passed holding that the action of the management bank in not regularizing the services of the workman and his termination from service on 26.12.2008 without complying with the

provisions of the ID Act is fair and justifiable. Hence he is not entitled to any relief.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 28th day of August, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the workman

WW1 24.10.2013

Shri M. Shajeevan

Witness for the management

MW1 05.05.2014

Shri K. Rajiv

Exhibits for the workman

- W1 - Copy of letter dated 30.10.2008 addressed to the Assistant General Manager P & D, 10B, Central Office, Chennai by the workman
- W2 - Copy of letter dated 27.12.2008 addressed to the Assistant Labour Commissioner (Central), Kakkanad, Kochi by the workman
- W3 - Details of engagement of the workman at the Regional Office, Indian Overseas Bank, Kozhikode
- W4 - Acknowledgement card addressed to the Assistant General Manager P & D, Indian Overseas Bank, Central Office, Chennai
- W5 - Copy of letter dated 03.09.2002 addressed to the Assistant General Manager (PAD), Indian Overseas Bank, Central Office, Chennai by the workman
- W6 - Copy of the forwarding letter dated 05.09.2002 addressed to the Manager/Chief Manager by the Senior Manager, Indian Overseas Bank, Kozhikode Branch

Exhibits for the management

- W1 - Copy of Voucher dated 09.09.2008 as to the payment of ` 1,650/- to the workman by the management bank
- W2 - Copy of Voucher dated 09.09.2008 as to the payment of ` 450/- to the workman by the management bank
- W3 - Details of engagement of the workman in the management bank dated 18.07.2012
- W4 - Copy of statement showing payment of coolie charges from November, 2008 to December, 2008 to the workman by the management bank.

नई दिल्ली, 7 मई, 2015

का.आ. 1011.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय जीवन बीमा निगम के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण /श्रम न्यायालय अरुनाकुलम के पंचाट (संदर्भ संख्या 280/2006) प्रकाशित करती है जो केन्द्रीय सरकार को 07/05/2015 को प्राप्त हुआ था।

[सं. एल-17012/45/96-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1011.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 280/2006) of the Central Government Industrial Tribunal-Cum-Labour Court Ernakulam as shown in the Annexure in the Industrial Dispute between the management of the LIC of India and their workman, received by the Central Government on 07/05/2015.

[No. L-17012/45/96-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B,
Presiding Officer

(Wednesday the 27th day of August, 2014/
5th Bhadrapada, 1936)

ID 280/2006

Workman	: Shri Sajimon T.T. (died) Thandel House W. Kodikulam (PO) Thodupuzha-685582
Additional 2nd workman	: Smt. Jeeja Sajimon W/o late Sajimon T.T. Thandel House West Kodikulam PO Thodupuzha
Additional 3rd workman (Minor)	: Master Vaisakhan T.S. S/o Late Sajimon T.T. Thandel House West Kodikulam PO Thodupuzha
Additional 4th workman (Minor)	: Ms Vaisali TS D/o late Sajimon TT Thandel House West Kodikulam PO Thodupuzha

Additional 5th workman

: Smt. Bharathi Thankappan
W/o Shri Thankappan
Thandel House
West Kodikulam PO
Thodupuzha

Additional 6th workman

: Shri Thankappan TM
S/o Mundan
Thandel House
West Kodikulam PO
Thodupuzha

(Additional workmen 2 to 6 were impleaded as legal heirs of the deceased workman)

By Adv. Shri C. Anil Kumar

Management

: The Divisional Manager
LIC of India
Divisional Office
PB No. 1133, MG Road
Ernakulam
Cochin-682011

By M/s. A.V. Xavier

This case coming up for final hearing on 13.08.2014 and this Tribunal-cum-Labour Court on 27.08.2014 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour by its Order No.-L-17012/45/96/IR (B-II) dated 29.08.1997 had referred the industrial dispute scheduled thereunder for adjudication to the Labour Court, Cochin. There it was numbered as ID 24/1997(C) of the Labour Court, Ernakulam. Later after formation of this Tribunal it was transferred to this Tribunal as per Order dated 24.01.2006 in WP(C) No. 1069/2006 of the Hon'ble High Court of Kerala. After receipt of the records in this tribunal from the Labour Court, Ernakulam, the case was renumbered as ID 280/2006 of this tribunal.

2. The dispute referred for adjudication is:

"Whether the action of the management of LIC of India, Muvattupuzha branch in dismissing the services of Shri Sajimon TT w.e.f. 1.8.94 is legal and justified? if not, to what relief the said workman is entitled?"

3. After submission of the pleadings the validity of the enquiry was considered by the Labour Court, Ernakulam treating it as a preliminary issue. The enquiry was set aside as per its order dated 15.02.2006. Challenging that order management filed WP (C) No. 17083/2007(H) before the Hon'ble High Court of Kerala, Ernakulam. It was dismissed

vide order dated 01.08.2013. After producing the certified copy of that order IA No. 54/2013 was filed to implead the wife of the deceased workman as his legal heir. It was allowed as per order dated 18.03.2014 and she was impleaded as additional second workman. Subsequently his two minor children being his legal heirs were allowed to be impleaded as additional workmen Nos. 3 and 4 as per order dated 18.03.2014 on IA 33/2014. Afterwards the mother and father of the deceased workman were also impleaded as his legal heirs as per order dated 13.08.2014 on IA 116/2014.

4. As per the request made by the learned counsel for both sides the case was posted in the Lok Adalat. There was a full and final settlement between the parties and a compromise petition was filed. In the compromise additional workman 2 to 6 in the ID were arrayed as legal heirs 1 to 5 and the management as the counter petitioner. As per the compromise the management agreed to pay a sum of Rs. 32,03,305/- as back wages due to the deceased workman to legal heirs 1 to 4 (additional Workmen 2 to 5 in the ID) in equal shares subject to deduction of income tax and the gratuity amount of Rs. 8,34,462/- to legal heir No. 5

(additional Workman No. 6) being the nominee. The share due to each of the two minor children arrayed as legal heir Nos. 2 and 3 in the compromise petition and additional workmen 3 & 4 in the ID is agreed to be deposited in Fixed Deposit in a nationalized bank by the management until they will attain the age of maturity and to hand over the fixed deposit receipts to their mother, the 1st legal heir (additional 2nd workman).

5. As there is nothing illegal which affects the validity of the compromise the same is accepted. Hence this ID is disposed of in terms of the compromise which will form part of this award.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the personal Assistant, transcribed and typed by her, corrected and passed by me on this the 27th day of August, 2014.

D. SREEVALLABHAN, Presiding Officer

APPENDIX -NIL

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

I.D. No. 280/2006

TT Sajimon (Died) : Workman

(1) Jeeja Sajimon, W/o Late T T Sajimon, Thandel House, West Kodikulam, Thodupuzh	-do-	Legal Heirs of deceased arrayed as additional workers 2 to 6.
(2) Vaisakhan T S, S/o Late T T Sajimon,	-do-	
(3) Vaisali T S, D/o Late T T Sajimon,	-do-	
(4) Bharathi W/o Thankappan, (Mother of Late Sajimon T T)	-do-	
(5) Thankappan T M, S/o Mundan, (F/o Late Sajimon T.T.)	-do-	

Vs

Life Insurance Corporation of India : Management

The matter was taken up in Lok Adalat and the parties agreed to settle the dispute on the following terms:—

1. In the discussion, the 5th among the above 5 legal heirs (Thankappan F/o Sajimon. T.T. of the deceased workman) agreed to accept Rs. 8,34,462/- the gratuity amount being the nominee of Shri Sajimon. T.T.

2. The Management agrees to pay a sum of Rs. 32,03,305/- (Rupees Thirty two lakh Three Thousand Three Hundred and Five only) towards back wages to the 1 to 4 legal heirs of the workman from the date of dismissal to the date of his death *i.e.* 07.03.2013 to be paid to the 1 to 4 legal heirs of Sajimon T.T. subject to deduction of Income Tax at

the rate applicable at the time of release of amount. The amount of Rs. 800826/- (1/4th share of Rs. 32,03,305/-) subject to deduction of Income Tax applicable will be paid to the 1 to 4 legal heirs of deceased Sajimon T.T.

Smt. Jeeja Sajimon shall give valid discharge for herself and on behalf of her children for receiving their share Rs. 800826/- each and Rs. 800827/- shall be paid to Smt. Bharathi Thankappan (Mother) separately after getting valid discharge.

3. The amount pertaining to minor children of Late Sajimon T.T. has to be managed by Smt. Jeeja Sajimon, being the Natural Guardian till they attain the age of maturity and the Management is not responsible for

managing the amount pertaining to the minor children. The amount due to the minors will be deposited in fixed deposit in a nationalized bank by the management until they will attain the age of maturity and the fixed deposit receipts will be handed over to their mother, the additional 2nd workman (1st legal heir).

4. The amounts will be payable by the Management as shown above, upon production of Legal Heirship Certificate of Sajimon T.T. from a Competent Authority.

5. Upon payment of the agreed amount of backwages among the 1 to 4 legal of Sajimon T.T., and gratuity to Shri Thankkapan being the nominee for receiving the gratuity, they will not have any further monetary claim or claim for Compassionate appointment against the management in connection with the employment of Sajimon T.T. with Life Insurance Corporation of India.

6. The legal heirs of Sajimon T.T., 1 to 5 have agreed to accept Rs. 32,03,305/- towards back wages subject to deduction of Income Tax applicable and Rs. 834462/- towards Gratuity in full and final settlement of all their claims against the Management in connection with employment of Sajimon T.T. with Life Insurance Corporation of India and has agreed to close I.D. No. 280/2006 pending before CGIT-cum-Labour Court, Ernakulam as settled.

7. Management agrees to hand over the TDS Certificate to the 1 to 4 legal heirs with liberty to get refund of it as per the provisions of the Income Tax Act.

Dated this the 13th day of August 2014

Legal Heirs of the deceased Workmen Management: Sd/-

(1) Jeeja Sajimon	Sd/-
(2) Vaisakhan TS (Minor)	Sd/-
(3) Vaisali TS (Minor)	Sd/-
(4) Bharathi Thankappan	Sd/-
(5) Thankappan TM	Sd/-

Counsel for Workman/Legal Heirs: Sd/-

Counsel of Management: Sd/-

Sd/-
Mediator

नई दिल्ली, 7 मई, 2015

का.आ. 1012.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंध तत्त्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 10/98) को प्रकाशित करती है जो केन्द्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12012/181/97-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 10/98) of the Central Government Industrial Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of Dena Bank and their workman, received by the Central Government on 05/05/2015.

[No. L-12012/181/97-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/10/98

Indian National Bank Employees Federation,
9, Sanwer Road,
Hardev Niwas,
Ujjain

...Workman/Union

Versus

Asstt. General Manager,
Dena Bank, Zonal Office,
107, Berasia Road,
Bhopal

...Management

AWARD

Passed on this 22nd day of April 2015

1. As per letter dated 13-1-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/181/97-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Dena Bank in terminating the services of Shri Om Prakash Suman Lal Agarwal w.e.f. 29-6-96 is legal and justified? If not, to what relief the said workman is entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim through General Secretary, Daily Wages Bank Employees Union Ujjain at Page 2/1 to 2/4. Case of 1st party is that he was engaged on 8.9.87 for sweeping, cleaning, dusting work in Navlakha branch, Indore. He was continuously working till 29-6-96. His working days are shown in para-7 of statement of claim. That he completed 290 days in 1992-93. Though he completed 240 days continuous service, bonus was not paid to him. His services were terminated without notice, 3 months pay was not paid before

termination. He is employee as defined under Section 25 B of ID Act. While IIInd party has violated Section 33 of ID Act terminating his services during pendency of conciliation proceedings. On such contentions, workmen is praying for reinstatement with back wages.

3. IIInd party filed Written statement at Page 6/1 to 6/5 opposing claim of workman. IIInd party denies workman was continuously working from 8-9-87 and he was working from 10.30 to 6 PM in the Navlakha branch. It is denied that workman completed 240 days continuous services. Workman was engaged temporarily as per exigency of work. Workman was not continuously working as contented by him. Workman is not covered under Section 25 B of ID Act. It is denied that services of workman are terminated in violation of Section 25-F Para 507, 524 of Sastry Award. Section 25-G, N are not applicable to the workman. It is denied that workman was denied reemployment and thereby IIInd party violated Section 25-H of ID Act. The claim of workman for bonus is not tenable under Section 41 of Payment of Bonus Act. It is submitted that workman is not entitled to any relief.

4. Workman filed rejoinder at Page 7/1 to 7/6 reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Dena Bank in terminating the services of Shri Om Prakash Suman Lal Agarwal w.e.f. 29-6-96 is legal and justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F, GN of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman has stated that he was engaged for cleaning, sweeping work from 8-9-87. He was working under different Branch Managers. As per letter dated 11-8-93, IIInd party had submitted information in the matter of regularization of his service. The working days of workman are shown in Para-5 of his affidavit. Only in the year 1992, working days are shown 290. During rest of the year, 1987 to 1991 and 1993 working days are shown less than 240 days. In his cross-examination, workman says he was working as peon.

Appointment letter was not issued to him, any post not advertised. His name was not sponsored through Employment Exchange. He was not interviewed. Payment vouchers were given to him. Payment was made weekly. He was unable to tell his working days in any of the year. He did not remember in whose name payment vouchers were prepared. That his sign was obtained on payment vouchers. Workman claimed ignorance what documents about his service were with IIInd party.

7. Despite repeated chances were granted, IIInd party did not adduce any evidence. Workman has not examined any co-employee. Document are not proved to substantiate his claim. The evidence of workman cannot establish that workman was continuously working for 240 days, 12 months before termination of his services. Therefore termination of service of workman in violation of Section 25-F of ID Act cannot be established. For above reasons, I record my finding in Point No. 1 Affirmative.

8. In the result, award is passed as under:—

- (1) The action of the management of Dena Bank in terminating the services of Shri Om Prakash Suman Lal Agarwal w.e.f. 29-6-96 is proper and legal.
- (2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार युनाइटेड इंडिया इन्स्योरेंस कं. लि. के प्रबंधतंत्र के सबद्व नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 105/08) प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-16014/5/2008-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1013.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 105/08) of the Central Government Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure in the industrial dispute between the management of the United India Insurance Co. Ltd. and their workmen, received by the Central Government on 05/05/2015.

[No. L-16014/5/2008-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/105/08

Shri Prem Chand Raikwar,
S/o Shri Ganeshram Raikwar,
R/o SAIT College Quarter,
Durga Nagar, Vidisha ... Workman

Versus

Manager,
United India Insurance Co. Ltd.,
Branch office Vidisha,
Ward No. 14, Guru Nanak Colony,
Vidisha ... Management

AWARD

Passed on this 30th day of March, 2015

1. As per letter dated 30-9-2008 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-Z-16014/5/2008-IR(B-II). The dispute under reference relates to:

"Whether the action of the Management of United India Insurance Co. Ltd. Vidisha Branch in terminating the services of Shri Prem Chand Raikwar w.e.f. 16-5-89 is legal and justified? What relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim on 27-5-2010. Case of workman is that he was engaged on daily wages from 8-5-88 in Vidisha branch of IIInd party. That workman performed his duty with honesty. His service record was unblemished. That workman was engaged by management to perform duty of Group D employee. He was working from 10.30 to 5 PM every day. Workman was initially paid Rs. 8/- per day. Wages were increased to Rs. 15/- per day. Workman was continuously working till 15-5-89. Instead of regularizing his services, IIInd party terminated his services without assigning reasons. That he completed more than 240 days continuous service. His discontinuation from service amounts to illegal retrenchment as IIInd party had not complied Section 25-F of ID Act. He was not served with notice, retrenchment compensation was not paid to workman on such ground, workman prays for his reinstatement with backwages.

3. IIInd party filed Written Statement opposing claim of workman. It is submitted that IIInd party is subsidiary of General Insurance Corporation of India and is

established as limited company registered under Companies Act 1956. Head office of IIInd party is at Chennai. Branch of IIInd party is at Bhopal & Vidisha in Madhya Pradesh. That workman was employed on casual basis for 2 hours before closing of the branch total 4 hours per day intermittently. Workman was paid wages Rs. 8/- per day from 18-10-88, wages were increased to Rs. 15/- per day. Workman had not completed 240 days continuous service under Section 25 B of ID Act. IIInd party has not appointed workman following recruitment policy. The post was not advertised, his name was not sponsored through Employment Exchange. Workman has completed 212 days work. It is reiterated that workman is not entitled to protection of Section 25-F of ID Act. Violation of section 25-F, G and ID Act is denied. IIInd party prays for rejection of claim.

4. Rejoinder is filed by workman reiterating his contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of United India Insurance Co. Ltd. Vidisha Branch in terminating the services of Shri Prem Chand Raikwar w.e.f. 16-5-89 is legal and justified?

(ii) If not, what relief the workman is entitled to?"

In Affirmative

Workman is not entitled to any relief.

REASONS

6. Workman has challenged termination of his service for violation of Section 25-F, G of ID Act. He also contends that he completed more than 240 days continuous service as per Section 25 B of ID Act. All material contentions are denied by IInd party. Workman failed to participate in reference. No evidence is adduced by workman. His evidence is closed on 20-6-2014.

7. Document produced by workman is admitted by management and marked Exhibit W-1. Ind party has admitted 212 days working of Ist party workman.

8. Affidavit of evidence supporting contentions of IIInd party is filed by witness Shri Rakesh Dixit. Management's witness in his cross denied that workman had completed 240 days cotinuous service rather the affidavit of management's witness para-6 shows that workman had not completed 240 days working as casual mazdoor.

9. As workman has failed to participate in reference, there is no evidence that he completed 240 days continuous service. There is no evidence that workman was entitled to Government Holidays. In absence of such evidence, the discontinuation of workman cannot be said illegal. Therefore I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:—

- (1) The action of the management of United India Insurance Co. Ltd. Vidisha Branch in terminating the services of Shri Prem Chand Raikwar w.e.f. 16-5-89 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1014.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूको बैंक के प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 70/98) प्रकाशित करती है, जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12012/292/97-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1014.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 70/98) of the Central Government Tribunal-Cum-Labour Court, Jabalpur as shown in the Annexure in the industrial Dispute between the management of the UCO Bank and their workman, received by the Central Government on 05/05/2015.

[No. L-12012/292/97-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

No. CGIT/LC/R/70/98

Shri Kamlesh Rao,
S/o Shri Chironji Lal, Guna,
Kamla Travels, AB Road,
Guna (MP) ... Workman

Versus

Zonal Manager,
UCO Bank, Zonal Office,
E-5, Arera Colony,
Bhopal (MP) ... Management

AWARD

Passed on this 31st day of March, 2015

1. As per letter dated 21-4-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section - 10 of I.D. Act, 1947 as per Notification No. L-12012/292/97-IR(B-II). The dispute under reference relates to:

"Whether the action of the Management of United Commercial Bank in terminating the service of Shri Kamlesh Rao, S/o Chironji Lal w.e.f. 26-12-90 is legal and justified? If not, to what relief the said workman is entitled?"

2. After receiving reference, notices were issued to the parties. Initially workman was proceeded ex parte and management submitted ex parte Written Statement and evidence ex parte order was set aside. Then workman submitted statement of claim. Case of 1st party is that he belongs to backward caste. His educational qualification is middle school pass. Workman holds registration in employment exchange Guna bearing No. 2116/85 02-10. He submits that he was engaged as peon on daily wages from 28-8-89 through Employment Exchange. He worked with 2nd party with honesty. His services were illegally terminated on 26-12-90. That he completed 240 days continuous service. His services were terminated without issuing notice or paying retrenchment compensation. He was appointed through Employment Exchange. He was orally terminated. He was given assurance that he will be permitted to work after few days. The application submitted to 2nd party were not replied. Management kept him waiting for long time from 1990 to 1997. In reply to legal notice and reply that he will not be re-employed. That as per statement, the employees working for 240 days during period of 3 years are entitled for regularization. On such ground, workman prays for reinstatement with back wages.

2nd party filed Written Statement opposing claim of workman. 2nd party raised preliminary objection that workman was not employed as per policy and procedure. There was no notification of vacancies for post of peon. Name of workman was not sponsored through Employment Exchange. 1st party workman was never selected by the Board. He was engaged purely on pick and choose on daily wage basis. There is no employer employee relationship. Workman is not covered under Section 2(s) of ID Act. It is denied that name of workman was registered in Bank. It is denied that workman continuously worked from 28-8-89 to 26-9-90. It is denied that workman completed more than 240 days continuous service. That the provisions of ID Act are not violated. Claim of workman is not supported by any documents. Workman is not entitled for absorption as per notification dated 19-10-89.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under.

My findings are recorded against each of them for the reasons as below:—

- (i) Whether the action of the In Negative management of United Commercial Bank in terminating the services of Shri Kamlesh Rao, S/o Chironjilal w.e.f. 26-12-90 is legal and justified?
- (ii) If not, what relief the As per final order. workman is entitled to?"

REASONS

5. Workman has challenged termination of his service for violation of Section 25-F, G of ID Act. That he was not issued notice, retrenchment compensation was not paid before termination of his service. Ist party produced documents Exhibit W-1 & W-2-Copy of marksheets and caste certificate. Exhibit W-3 is notice issued to Bank Authorities. W-4 is reply given to workman. W-5 is copy of reply filed before ALC, W-6 is copy of Circular dated 19-10-89. The claim of workman for regularization on the ground of completing 240 days continuous service is not covered by Notification Exhibit W-6. Para-2 of said notification provides—

"Completion of 240 days or more without intimation during period of 3 years immediately preceding the settlement. Workman himself claims that he was working with IIInd party Bank from 28-8-89 to 26-12-90. Therefore he does not fulfil eligibility criteria as per circular Exhibit W-6.

6. Workman in his affidavit of evidence has stated that he was continuously working from 28-8-89 to 26-12-90. In his cross-examination, his evidence on the point was not challenged. Management's witness Anup Srivastava filed affidavit supporting contentions of IIInd party that workman is not entitled to absorption as per circular dated 19-10-89. That workman had not completed 240 days continuous service. Workman could not be considered for empanelment for which his name did not appear in the seniority list of daily wage workers. In his cross-examination, management witness says workman was not engaged on daily wages in 1989. There was not vacancy of peon, appointment letter is not issued to daily wage employees. Exhibit M-1 circular was not amended. Seniority list of daily wage employees was not prepared. Management's witness explained that seniority list was prepared as per the applications received. The details of the work assigned to Ist party workman are not shown in Written Statement filed by IIInd party. The attendance register of daily wage employees is not maintained. The daily wage employees are paid wages under voucher considering his working days. The vouchers relating to payments made to workman are not produced. If evidence

of workman is appreciated in light of evidence of the management's witness, it is clear that when evidence of workman continuously working from 28-8-89 to 26-12-90 is not challenged therefore I do not find any reason to reject his evidence. Workman has established that he was continuously working more than 240 days. His services are terminated without notice, retrenchment compensation was not paid to him. Exhibit M-2 produced by management pertains to the empanelment of employees engaged on daily wage basis. The evidence on record shows services of Ist party are terminated in violation of Section 25-F of ID Act.

7. Learned counsel for workman Shri Arun Patel on the point of burden of proof relies on ratio held in case of Director, Fisheries Terminal Division versus Bhikubhai Meghajibhai Chavda reported in AIR 2010 SC-1236. Their lordship held workman had on daily wages would have difficulty in having access to all official documents, muster rolls etc. in connection with his service. Burden of proof shifts to employer to prove that he did not complete 240 days of service in requisite period to constitute continuous service.

Learned counsel of IIInd party Shri Bhattacharya produced copies of award in R/157/01. The observation made that workman failed to prove by cogent evidence. He was illegally appointed following prescribed procedure. Each case needs to be decided as per evidence adduced by parties. The award passed in R/157/01 cannot be treated binding president.

Next reliance is placed in ratio held in case of Himanshu Kumar Vidyarthi versus State of Bihar reported in 1997 SCC (L&S) 1079. I am aware that the ratio held in the case has been set-aside by subsequent judgements.

Learned counsel for IIInd party further relied on ratio held in case of Karur Vysya Bank Employees Union versus M.P. Handrakantraj Urs reported in 1988 LAB.I.C. 1746. Their Lordship considering services of bank employees failure of employee to prove that he worked for 240 continuous days in a year section 25-F is not attracted.

In present case, evidence discussed above is sufficient to hold that Ist party workman has completed 240 days continuous service. The ratio cannot be applied. For same reasons, ratio relied by learned counsel for IIInd party in case of Surendranagar District Panchayat versus Dahyabhai Amar Singh reported in 2006-SCC (L&S) 38 cannot be applied to case at hand.

For reasons discussed above, I record my finding in Point No. 1 in Negative.

8. Point No. 2—workman is not entitled for absorption as per circular dated Exhibit W-1 as workman was not working 3 years before the settlement. Workman has

completed 240 days continuous service long back. His services are terminated in violation of Section 25-F of ID Act. Considering the period of working of Ist party workman for more than one year, compensation Rs. 40,000 would be appropriate. Accordintly I record my finding in Point No. 2.

9. In the result, award is passed as under:—

- (1) The action of the management of United Commercial Bank in terminating the services of Shri Kamlesh Rao, S/o Chironjilal w.e.f. 26-12-90 is not proper and legal.
- (2) IIInd party is directed to pay compensation Rs. 40,000 to workman within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1015.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 157/03) प्रकाशित करती है जो केंद्रीय सरकार को 05/05/2015 को प्राप्त हुआ था।

[सं. एल-12011/50/2003-आई आर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. 157/03 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the management of Bank of India and their workman, which was received by the Central Government on 05/05/2015.

[No. L-12011/50/2003-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/157/03

General Secretary,
Nationalised Bank Karmachari Sangathan,
hardev Niwas, 9, Sanwer Road,
Ujjain

...Workman/Union

Versus

Regional Manager,
Bank of India,
Zonal Office, 18, Sjanku Marg,
Freeganj,
Ujjain

... Management

AWARD

Passed on this 20th day of April 2015

1. As per letter dated 11-9-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.L-12011/50/2003-IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Regional Manager, Bank of India, Indore in not providing appointment on compassionate ground to Shri Sanjay Sarode S/o Late Shri Namdeo Rao Sarode is justified? If not, what relief the workman is entitled for?”

2. After receiving reference, notices were issued to the parties. Ist party dependent submitted statement of claim at page 8/1 to 8/5. Case of Ist party workman is that his father Namdev Rao was working in IIInd party Bank from 19-1-66 against permanent post of peon. His father died on 26-10-97 while working at Rambagh branch Indore. His father left widow Nirmala Bai, son Sanjay, Deepak and Rajeev. That as per circular dated 25-9-97, Dependent Employment Scheme has been introduced in the Bank. It is further submitted that Ist party was looking after his two brother and mother. On 13-5-99, he submitted representation to General Manager claiming employment on compassionate ground. Bank did not inform any decision in the matter therefore he approached Union. The dispute was raised before ALC which is referred for adjudication by the Government. Ist party further submits that he had also approached National Commission for SC, ST for providing dependent employment to him. As per letter dated 28-6-01, the National Commission for association had written letter for redressal in the matter. The claim of Ist party for dependent employment was rejected by the Bank as per letter dated 18-7-01 on the ground that last income of the family was more than 60% of the income of the deceased. In conciliation proceedings, IIInd party did not produce documents why income of family was found more than 60% of income of the deceased. As per documents produced in conciliation proceedings, the income of Rs. 171495.15 received towards gratuity, loan of Rs. 19528 was adjusted, amount of Rs. 1,51,967.15 was paid. Interest of Rs. 1266 was shown, pension of Rs. 1934 total income of the family was shown Rs. 3200/- Last pay of deceased was shown 5031.-, its 60% was shown 3078.73. Ist party submits that claim for dependent employment was not properly considered. He prays direction to the IIInd party for providing compassionate employment.

3. IIInd party filed Written Statement at page 11/1 to 11/10 opposing claim of Union. IIInd party did not dispute father of Ist party was ex-employee. The objection is raised that the Union was not operating with IIInd party. Deceased Namdev Rao was not member of the Union. Union has no locus to raise the dispute. Ist party is not covered as workman under Section 2(s) of ID Act. There is no employer employee relationship. Compasionate appointment cannot be claimed as of right. As per circular dated 29-5-97, the scheme for dependent employment was introduced for clerical and subordinate cadre. The revised scheme was circulated on 17-3-99. The scheme came into force effect from 13-1-99.

4. That Late Namdev was employer in the Bank. He was posted in Rambagh branch. Late Namdev died on 20-10-97. The widow of deceased employee did not approach for compassionate appointment. Ist party claiming to be son of late Namdeo submitted application for appointment. Considering circumstances and facts, the claim of Ist party was not accepted. Said decision was informed to Ist party as per letter dated 20-04-01. The basic wages of deceased employee were Rs. 5131.23, DA-Rs. 2636.33, 60% of basic is shown 3078.73. It is reiterated that family of deceased was paid Rs. 1,51,967.15, Rs. 1,80,000 on account of BSB. The widow had not approached for compassionate appointment. The family is granted benefit of appointment. The family is able to survive more than 5 years is itself indicative that compassionate appointment is not required, the family can survive. In absence of positive material to establish claim for dependent employment could not be accepted. The general rule is to be followed strictly exception is in favour of dependents of employee dying in harness, leaving family in penury without any means of livelihood. IIInd party referred to ratio held in various cases.

5. IIInd party denies that Ist party Sanjay had to look after the family member of deceased. That management had considered application for compassionate ground. As per letter dated 20-4-01, Ist party was intimated. It is submitted that Ist party is not entitled to dependent employment under the scheme.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) “Whether the action of the management of Regional Manager, Bank of India, Indore in not providing appointment on compassionate ground to Shri Sanjay Sarode S/o Late Shri Namdeo Rao Sarode is justified? In Negative

(ii) If not, what relief the workman is entitled?” As per final orders.

REASONS

7. IIInd party has contented that Union has no locus standi. The order of reference shows that dispute was raised by General Secretary, Nationalised Bank Karmchari Sangathan. The order of reference is not challenged. The statement of claim is signed by Ist party as well as Union representative Shri Ram Nagwanshi. Copy of death certificate, copy of the scheme for compassionate employment Exhibit W-1 are admitted by IIInd party, copy of application for compassionate appointment. The application dated 13-5-99 reply submitted before ALC, letter issued by National Commission for SC, ST, letter dated 18-7-01 issued by Asstt. General Manager, Bench Clerk is directed to give separate exhibit of those documents. As per letter dated 18-7-01, the National Commission for SC, ST was informed that income of the family of deceased was more than 60%. Compassionate Appointment could not be allowed to Ist party. Copy of reply filed before ALC is also admitted. The documents produced by workman copy of failure report sent to Govt is admitted.

8. Ist party filed affidavit of his evidence supporting his claim for employment on compassionate ground. In his cross-examination, Ist party says he has two brothers and one sister. His sister and one brother are married. His mother resides at Indore along with his younger brother. He admits receipt of Rs. 1,71,495 towards gratuity and amount of Rs. 1,80,000 under GSIR.

9. Management's witness Shri Mahendra Singh in his affidavit of evidence admits death of late Namdeo Rao on 20-10-97. The widow did not approach management for compassionate appointment. Ist party was informed decision in the matter as per letter dated 20-4-01. That Bank decided not to provide dependent employment. That one of the family member widow of deceased did not ask for employment. That daughter is married, two sons have been married and well settled. In his cross-examination, management's witness says he was not working in the branch. He was unable to tell how amount of interest received by widow was calculated. The documents admitted by witness are marked Exhibit W-4 in the court. In Written Statement of IIInd party and affidavit of management's witness DA Rs. 2536.33 is shown. However while calculating 60%, the DA was not considered. If total amount of pay is considered, the same comes to Rs. 7667.56, the amount of 60% is wrongly calculated considering only basic pay of the deceased. The copy of scheme produced Annexure A does not exclude amount of DA from salary of deceased employee for calculation of his income for dependent employment. The evidence of management's witness is silent about income of family members. It is surprise to say that while rejecting claim of Ist party for dependent employment, the amount of DA was excluded while calculating 60% income.

10. Learned counsel for IIInd party Shri A.K. Shashi relies on ratio held in case of Union of India versus Bhangwan Singh reported in 1996-1-LLJ-1127. Their Lordship considering employee left behind besides the respondent two major sons and his wife. They did not apply for job on compassionate ground. Plea of the respondent for compassionate employment held therefore not to enable the family to tide over the sudden crisis to the family resulting from the employee's death in harness.

In present case, the claim of Ist party workman was rejected on the ground that income of family was above 60% of the pay of deceased employee. Claim of Ist party was not rejected on the ground that other principles have not applied for dependent employment. All the dependent left by deceased employee could not be provided dependent employment and therefore the ratio held in above cited case cannot be beneficially applied to present case.

Reliance is also placed on ratio held in case of Bank of Maharashtra versus Manoj Kumar Deharia reported in 2010(3) MPLJ-213. Their Lordship held that exceptional nature of appointment as it is granted under a special scheme carried out de hors the normal mode of recruitment, the same has to be governed as per the policies or provisions governing such appointment prevalent at a particular point of time when consideration is to be made and not on the basis of a policy which was in vogue and has been given up by the employer due to changed circumstances.

IIInd party has not alleged any change in policy in the circumstances therefore the ratio in above cited case cannot be applied to case at hand.

In case of General Manager (D&PB) and others versus Kunti Tiwari and another reported in 2004(7) SCC 271, Their Lordship dealing with compassionate appointment held terminal benefits received and other movable and immovable property possessed by the family of the deceased employee showing that its financial condition was not penurious. The denial of compassionate appointment by the Bank was upheld.

In present case, there is no evidence about property or any other source of income of the deceased. Therefore ratio cannot be applied to case at hand.

11. Union Representative Shri Ram Nagwanshi has produced copy of award in R/87/04. Each case required to be decided on evidence adduced by parties. Award passed in other matter is not binding as precedent. The copy of award in R/48/01 submitted by Shri Ram Nagwanshi does not advance claim of Ist party as the claim of workman in said case for employment on compassionate ground was rejected.

12. Considering evidence that while calculating 60% amount for deployment employment, the amount of DA was excluded. The denial of dependent employment to Ist

party is not proper. For above reasons, I record my finding in Point No. 1 in Negative.

13. In the result, Award is passed as under:—

- (1) The action of the management of Regional Manager, Bank of India, Indore in not providing appointment on compassionate ground to Shri Sanjay Sarode S/o Late Shri Namdeo Rao Sarode is not proper and legal.
- (2) IIInd party is directed to provide compassionate employment to Ist party as per the scheme within two months from date of publication of Award. Ist party shall not be entitled to any back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1016.—औद्योगिक विवाद अधिनियम, 1947 (1947

का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र के संबद्ध नियोजनकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 12/98) प्रकाशित करती है जो केन्द्रीय सरकार को 05.05.2015 को प्राप्त हुआ था।

[सं. एल-12012/198/97-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1016.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref.12/98 of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 05.05.2015.

[No. L-12012/198/97-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/12/98

Indian National Bank Employees Federation,
9, Sanwer Road,
Hardev Niwas,
Ujjain

...Workman/Union

Versus

Asstt. General Manager,
Dena Bank, Zonal Office,
107, Berasia Road,
Bhopal

...Management

AWARD

Passed on this 22nd day of April, 2015

1. As per letter dated 13-1-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/198/98/IR(B-II). The dispute under reference relates to:

“Whether the action of the management of Dena Bank in terminating the services of Shri Madanlal Ramlal Jakhad *w.e.f.* 1.7.96 is legal and justified ? If not, to what relief the said workman is entitled ?”

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that from 10.3.85 he was engaged for cleaning, sweeping work in Siyarganj branch, Indore by Branch Manager Anil Joshi. He was continuously working in the branch under different Branch Manager. As per letter dated 19.9.90, Regional office had called information about temporary/badly peon working in the branch. Information was submitted by Branch Manager about his working and payment under voucher. Information was called by Regional office as per letter dated 11.8.93. Ist party workman has shown his working days in para-10 of statement of claim. His working days were 1985-52 days, in 1986-38 days, in 1987-164 days, in 1988-158 days, in 1989-95 days, in 1990-227 days, in 1991-289 days, in 1992-269 days and in 1993-181 days. Though he completed 240 days continuous service, he was not paid bonus as per Section 8 of Payment of Bonus Act. IIInd party terminated his services on 1.7.96 without notice or paying 3 months pay. Workman submits that termination of his service is in violation of Section 25-F, G, N of ID Act. He was not given opportunity for re-employment thereby IIInd party violated Section 25 H of ID Act. On such ground, workman prays for his reinstatement and payment of bonus. Claim for bonus of Ist party is beyond the terms of reference.

3. IIInd party filed Written Statement at Page 6/1 to 6/3 opposing claim of workman. IIInd party denied workman was continuously working from 10.3.85 on pay scale. Workman was not continuously working. There was no question of paying wages as per pay scale. Workman was engaged temporarily as casual worker as per exigencies. Wages were paid as per prevailing rates. Workman has not completed 240 days continuous service in any of the year. He is not covered as employee under Section 5 B of ID Act. It is denied that termination of his service is in violation of Section 25-F, G, N of ID Act. Violation of Section 33 of ID Act is also denied. On such contentions, it is submitted that workman is not entitled to any relief.

4. Ist party submitted rejoinder at Page 7/1 to 7/5 reiterating its contentions in statement of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :-

(i) Whether the action of the management of Dena Bank in terminating the services of Shri Madanlal Ramlal Jakhad <i>w.e.f.</i> 1.7.96 is legal and justified ?	In Affirmative
(ii) If not, what relief the workman is entitled to ?”	Workman is not entitled to any relief.

REASONS

6. Ist party workman is challenging termination of his service for violation of Section 25-F, G, H of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman in his affidavit of evidence says he was engaged for cleaning, sweeping work from March 85 at Indore. He was engaged on daily wages. He was working under different Branch Managers. His working days are reproduced in para-8 of his affidavit. Workman reiterates that he completed 240 days continuous service during each of the year. He was not paid bonus. In his cross-examination, workman says he has not submitted any affidavit, he was working as peon. Appointment letter was not issued to him. His name was not sponsored through Employment Exchange. Manager called him orally and conducted his interview. The documents received by him from head Office are produced. He started working in the Bank from 10.3.85. In 1987, he was paid weekly wages. The amount was deposited in his account. The extract of his account is not produced. He was unable to tell his working days during each of the year since 1985 to 1993. He denied that he was engaged as part time. Workman has not proved any document to substantiate his claim. IIInd party has not adduced evidence. The evidence of workman is not supported by any documents to corroborate his evidence. Any other employee is not examined that he was continuously working during the relevant period. The zerox copy of documents produced by workman are not proved by adducing evidence. Therefore termination of services of workman in violation of Section 25-F cannot be established. For above reasons, I record my finding in Point No. 1 in Affirmative.

7. In the result, Award is passed as under :-

- (1) The action of the management of Dena Bank in terminating the services of Shri Madanlal Ramlal Jakhad *w.e.f.* 1.7.96 is proper and legal.
- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1017.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ संख्या 161/03) प्रकाशित करती है जो केन्द्रीय सरकार को 05-05-2015 को प्राप्त हुआ था।

[सं. एल-12011/124/2003-आई आर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1017.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 161/03) of the Cent. Govt. Indus. Tribunal-Cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the Management of Bank of India and their workman, received by the Central Government on 05-05-2015.

[No. L-12011/124/2003-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/161/03

General Secretary,
Daily Wages Bank Employees Association,
Hardev Niwas, 9,
Sanwer Road, Ujjain ...Workman/Union

Versus

Zonal Manager,
Bank of India,
Zonal Office, 22,
Yashwant Niwas Road,
Indore ...Management

AWARD

(Passed on this 22nd day of April 2015)

1. As per letter dated 23-09-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section 10 of I.D. Act, 1947 as per Notification No. L-12011/124/2003-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Bank of India in terminating the services of Shri Pradeep Kumar Paliwal and not paying him the bonus is justified? If not, what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 3/2 to 3/7. Case of workman is that he was working as peon on vacant post from April 1990. He was paid wages as per pay scale. The record of pay of wages is in custody of IIInd party. His signatures were obtained on payment vouchers. Since March 1991, wages as per pay scale were discontinued. Workman was paid monthly pay Rs. 175/- From 5-7-94, his was increased to Rs. 550/- per month. On 26-7-97, one Bane Singh was transferred to Dhabla Hurd. 6 years continuous service of workman was terminated without notice. He was not paid retrenchment compensation. Ist party workman reiterates that he completed 245 days continuous service during April 1990 to March 1991. After termination of his service, other persons were engaged by IIInd party. When dispute was raised before ALC, Bhopal, IIInd party filing reply had admitted engagement of workman intermittently. Death of Umrao Singh was admitted on 27-4-02. Workman had submitted rejoinder reiterating his contentions. Workman has shown working days 229+64 holidays total 292 days. He was paid wages for six days in a week. Workman also alleges violation of Section 25-G,N of I.D. Act, principles of last come first go was not followed. His services are terminated in violation of Section 25-F of ID Act. On such ground, workman is praying for reinstatement with back wages.

3. IIInd party submitted Written Statement at Page 10/1 to 10/12 opposing claim of Ist party workman. IIInd party submits that Shri Ram Nagwanshi claiming General Secretary of the Union is not employee of the Bank of India, he is not competent to raise dispute. The order of reference is vague. The particulars of employment and termination of workman are not given. That Ist party is not covered as workman under Section 2(s) of ID Act as he was not appointed by IIInd party. The reference made by Govt. is not tenable. The appointments in Bank are covered by statutory rules and regulations. Person seeking employment in the Bank has to go through the prescribed procedure for appointment. Workman was engaged temporarily as per exigencies. His engagement was casual. Branch Manager is not Appointing Authority of any staff in the Bank. The Regional Manager with prior approval of Head office is competent to appoint sub staff. The appointment of sub staff are made only eligible candidates through Employment Exchange in order to secure guarantee of employment under Article 16 of the Constitution. The reservation policy of Government of India is also required to be followed. The Branch Manager required to engage the person whenever there is temporary increase in work during leave vacancy.

4. IIInd party further submits that workman was engaged for 50 days in April 1990 to March 91. IIInd party denies workman had completed 240 days continuous service. On all such ground, it is prayed that workman is not entitled to any relief.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

“(i) Whether the action of the management of Bank of India in terminating the services of Shri Pradeep Kumar Paliwal and not paying him the bonus is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?	Workman is not entitled to any relief.”

REASONS

Workman is challenging order of his termination for violation of Section 25-F of ID Act contending that he had completed 240 days continuous service during April 1990 to March 91. In support of his claim, workman filed affidavit of his evidence covering his contentions in statement of claim. That his services are terminated without notice, retrenchment compensation is not paid to him. He had completed 7 years service. In his cross, workman says he knows English. He was working in the Bank from 1990 to 1997. After 1991, he was working as sweeper. He was engaged by Branch Manager Shri C. L. Jain. He further says that he submitted application in 1981 and correct it as 1988. Post was not advertised. He was not interviewed, appointment letter was not given to him. When he was working in the Bank, other person was working as peon. He was unable to tell for how many days he worked in 1990. He do not interrupt in it. He further says he was not member of any Union, he was not knowing who was President of the Union.

7. Management of IIInd party has produced Bipartite settlement Exhibit M-1, Recruitment Policy Exhibit M-2. From evidence in cross-examination of workman, it is clear that he was not engaged following recruitment rules.

8. Management's witness Chhaganlal Jain filed affidavit of his evidence supporting contentions of IIInd party in Written Statement. That during 1990-91, workman had completed 50 days work as badly/ad hoc part time for 2 hours in a day. Management's witness in his cross says appointment letter was not given to the workman. Exhibit M-1 was not followed. He was working in Dhabla branch from 1-9-88 to 3-7-91. He had not received any information from other Branch Manager. During my working period, Umrao Singh died and after his death, Banesh Singh was working in the Bank, he was unable to tell his working period. Ist party workman was engaged during leave period of Chhaganlal Singh. Workman was paid wages by Branch Manager. He was subsequently reimbursed. Management's witness was unable to tell who was doing sweeping, cleaning work since 1997. The evidence of workman is not

supported by any documents. Workman has not examined Shri Charan Singh or any other co-employee.

Learned counsel for IIInd party Shri A. K. Shashi relies on ratio held in case of—

Karnataka State Road Transport Corporation and another versus S. G. Kotturappa and another reported in 2005(3) SCC-406. Their Lordship considering Badli workers included in wait list and not select list, their service if found not suitable can be discontinued. Badli enjoys no status, his service not protected by any statute, holds no civil post. Termination of Badli workers services in present case held proper as it was not one attracting compliance with section 25-F of ID Act.

In case of UPSEB Vrs Presiding Officer, Labour Court, Kanpur reported in 1998 LAB.I.C. 1702, his Lordship of Allahabad High Court held raising Industrial dispute after delay of 8 years of passing order, no relief can be granted to such workman.

In case of Indian Iron and Steel Co. Ltd. versus Prahlad Singh reported in 2001(a) SCC 424, their Lordship of Supreme Court considering Industrial dispute raised after 13 long years of termination of service, no reasonable explanation given for such delay. In such circumstances, the Industrial Tribunal rightly refused to grant any relief.

In present case as per Statement of claim, services of Ist party workman were terminated in 1997, the dispute is raised in 2003. Claim of workman cannot be rejected on ground of delay as dispute is raised within 5-6 years.

10. IIInd party admitted document P-4 reply by IIInd party before ALC. The claim of workman was denied in said document. To be precise, the evidence of workman about completion of 240 days continuous service is not supported by document or evidence of co-employee. His evidence cannot establish completion of 240 days service termination of service of workman in violation of Section 25-F is not established. Therefore I record my finding in Point No. 1 in Affirmative.

11. In the result, award is passed as under:-

- (1) The action of management of Bank of India in terminating the services of Shri Pradeep Kumar Paliwal and not paying him the bonus is legal and proper.

- (2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1018.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोचीन पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण/श्रम न्यायालय अरुनाक्षुलम के पंचाट (6/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 07.05.2015 को प्राप्त हुआ था।

[सं. एल-35011/2/2011-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 7th May, 2015

S.O. 1018.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Ernakulam as shown in the Annexure, in the industrial dispute between the management of Cochin Port Trust and their workmen, received by the Central Government on 07-05-2015.

[No. L-35011/2/2011-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present: Shri D. Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Monday the 23rd day of March, 2015/2nd Chaitra, 1937)

ID 6/2012

Unions : 1. The General Secretary
Cochin Port Harbour Workers Union
Venkitaraman Road
W/Land
COCHIN-3

(*ex-parte*)

2. The General Secretary
Cochin Port Staff Association
Wellington Island
COCHIN-682009
By M/s. S Sreekumar Associates
3. The General Secretary
Cochin Port Employees Organisation
Venkitaraman Road
Wellington Island
COCHIN-682009
By M/s. M M Cherian Law Chambers

Management : The Chairman
Cochin Port Trust
W/Island
COCHIN-682009
By M/s. B S Krishnan Associates

This case coming up for final hearing on 03.03.2015 and this Tribunal-cum-Labour Court on 23.03.2015 passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour *vide* Order No. L-35011/2/2011-IR(B-II) dated 18.01.2012 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

'Whether the action of the management of Cochin Port Trust in computation of 13 months salary for calculation of income tax putting additional burden on its employees is justified? What relief the workers are entitled to?'

3. The change in the payment of salary for the month of March in April to the month of March itself resulted in computation of 13 months' salary in the financial year 2009-2010 for payment of income tax causing loss to the workers of the Cochin Port Trust and hence the unions raised the dispute.

4. After service of summons on all the three unions first union did not enter appearance and hence set ex-parte. Unions 2 and 3 after appearance filed separate claim statements with almost identical allegations. The allegations, in a nutshell, are that the Cochin Port Trust was having its financial year from 1st March to February 28/29 every year and had been following the practice of computing income tax from March to February for an assessment year as in the case of other government institutions. The assessment year of income tax is the 12 months from 1st April to 31st March. No salary was paid to the workers in the month of March and salary for the months of March and April were paid in the month of April. There were two salary payments in every April. Hence the salary for 13 months *i.e.*, from March to February was reckoned for the assessment year of 2009-2010 for calculation of income tax. With the introduction of the new computer system by which Tax Deduction at Source (TDS) was made from the salaries and wages paid from 1st April to 31st March, paying salary every month including the month of March. The salary for the month of March, 2009 was therefore debited in the bank account of the workers in the month of March itself instead of 1st April. So there was payment of 13 months' salary for the assessment year of 2009-2010. The trade unions wrote a letter to the FAC & CAO, Cochin Port Trust, well in advance on 25.01.2010, informing the distress of the employees in being unduly taxed for 13 months' salary due to the introduction of a new computer system. In the previous assessing years they were assessed for income tax for the salary they had received for 12 months and they were bound to be assessed for the income tax payable for the coming year (2010-2011) for the salary they had received for 12 months. They were

assessed for an additional one month's salary only in the assessment year 2009-2010. Computation of 13 months' salary for an assessment year may shift the income tax slab to the next higher slab which requires payment of more amount as tax. The employees were being penalized for no reason but for the sake of the change brought in the system unilaterally by the management. As a result the workers had been levied with an excess payment of income tax amounting to `50 lakhs. The Cochin Port Trust disregarding the objections of the trade unions computed income tax for 13 months and remitted the excess amount of `50 lakhs. The payment was made accounting an advance to the workers without their consent and it was later deducted from the arrears of salary paid to them while implementing the wage revision without any notice to the workers or the trade unions. It is unjust, arbitrary and illegal. Hence they are entitled to get it reimbursed together with interest.

5. Management filed written statement admitting the allegation in the claim statements that Tax Deduction at Source (TDS) from salaries of employees was effected earlier by reckoning the income from the month of March to February as followed in government department and there was a change over in the financial year from March to February to April to March during the year 2009-2010 consequent on implementation of a new computerized system called SAP in the management. It is contended that with the introduction of SAP system of pay roll from October 2009 onwards it became necessary to calculate income tax for the salary from April to March. The SAP India Version was implemented taking into account the TDS provisions of the Finance Act enacted by the Government of India from time to time. SAP system generates TDS forms pertaining to the period from April to March and no other modification is acceptable in the system. So the system prevalent in the management calculating TDS from March to February had to be changed to April to March. It resulted in reckoning salaries and allowances from March, 2009 to March, 2010 actually paid during the financial year 2009-2010. It caused additional tax burden only to a negligible number of employees on account of the change in the slab for calculation. As a result of the change in the financial year the additional tax on the additional income to the individual employees was paid by the management and subsequently recovered from their salary arrears. Since the Port is an autonomous body, following commercial accounting system, financial accounts are prepared reckoning the expenses including expenditure on salaries and wages from April to March. Prior to the introduction of the new system the salary for the month of March was paid on the first day of April and the salary for the month of April was paid on the last working day of that month. 12 months' wages for the purpose of payment of tax was calculated on that basis on account of the switch over to the new system. Tax deduction was made treating the

accounting year as April to March and hence the salary for the month of March was paid in that month itself. The TDS was deducted only the actual salary earned by the employees. There is no basis for the allegation that `50 lakhs had to be paid by the employees on account of the change in the financial year for deduction of tax. As per the provisions of the Income Tax Act recipient of the income has to pay the tax. There is no justification in the claim of the unions that the burden of payment of additional tax is to be borne by the management. There is no need to have the consent of the employees before switching over to the new system. Since the financial year was changed following the provisions of the Income Tax Act it is the duty of the drawing officer to deduct the tax from the salary. Hence the unions are not entitled to any of the reliefs claimed in the claim statements.

6. Unions 2 and 3 did not file any rejoinder in spite of the opportunity given for that purpose.

7. For the purpose of deciding the reference one witness was examined from the side of unions 2 and 3 as WW1 but no exhibit was marked. No evidence, either oral or documentary, was adduced from the side of the management. After closing the evidence the arguments for both sides were heard.

8. The points for determination are:

(i) Whether the computation of 13 months salary for calculation of income tax for the assessment year 2009-2010 is justifiable?

(ii) What relief, if any, the workmen are entitled to?

9. Point No.(i): Payment of salary for the month of March, 2009 on the 31st March, 2009 in that year resulted in calculation of income by computing 13 months' salary for payment of income tax. It is not in dispute that the salary for the month of March was being paid on the 1st April and the salary for the subsequent months was paid in the respective months itself. The workers were getting the salary for the month of March and April in the month of April. The computation for the purpose of payment of income tax was made by taking the salary for the month from March to February. According to the management it had to be changed with the introduction of a new computer system by which the Tax Deduction at Source was made from the salaries and wages paid from 1st April to 31st March. Since the employees were given salary for the month of March, 2009 in that month itself it necessitated the computation of 13 months salary for the payment of income tax for the assessment year 2009-2010. Management cannot be blamed for the payment of the salary for the month of March in that month itself. It will become part of the income for assessment for the purpose of payment of income tax for that assessment year.

10. Assessment year is defined under Section 2(9) of the Income Tax Act, 1961 as the period of twelve months commencing on the 1st day of April every year. The income for the previous year is being assessed in every assessment year. Section 3 of the said Act defines previous year as the financial year immediately preceding the assessment year. Financial year is not defined in the said Act. It is defined in Section 3(21) of the General Clauses Act, 1897 which says that "financial year" shall mean the year commencing on the first day of April. It cannot be said that the financial year as far as the Cochin Port Trust is concerned is from March to February for the purpose of assessment of income tax. There is nothing to show that the salary for the month of March is to be paid in the month of April. There is no quarrel with regard to the fact that the salary for the remaining months were being paid in the respective months. The change in the reckoning of salary from the month of March to February to April to March cannot be said to be illegal as the financial year is to be from the 1st April to 31st March. Nothing was pointed out by the learned counsel for unions 2 and 3 to satisfy that the salary for 13 months cannot be computed for the purpose of calculation of income tax for an assessment year. There is no prohibition for making payment of salary for the month of March in March itself. Hence it cannot be said that the action of the management in computation of 13 months salary for calculation of income tax is not justifiable. In such a case if there is any grievance the workmen are provided with the remedy under Section 89 of the Income Tax Act. It reads thus:

"89. Relief when salary, etc., is paid in arrears or in advance.—Where an assessee is in receipt of a sum in the nature of salary, being paid in arrears or in advance or is in receipt, in any one financial year, of salary for more than twelve months or a payment which under the provisions of clause (3) of section 17 is a profit in lieu of salary, or is in receipt of a sum in the nature of family pension as defined in the Explanation to clause (iiia) of section 57, being paid in arrears, due to which his total income is assessed at a rate higher than that at which it would otherwise have been assessed, the Assessing Officer shall, on an application made to him in this behalf, grant such relief as may be prescribed:

Provided that no such relief shall be granted in respect of any amount received or receivable by an assessee on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or in the case of a public sector company referred to in sub-clause (i) of clause (10C) of section 10, a scheme of voluntary separation, if an exemption in respect of any amount received or receivable on such voluntary retirement or termination of his service or voluntary separation has been claimed by the assessee under clause (10C) of section 10 in respect of such, or any other, assessment year."

11. In order to have the financial year as April to March the management made the change in the payment of salary for the month of March in April to the month of March itself with the introduction of SAP. It has resulted in computation of 13 months salary for the purpose of income tax for the assessment year 2009-2010. Though some of the workers had to pay more tax they are not remedyless. Hence it cannot be held that the action of the management in the computation of 13 months salary for the assessment year 2009-2010 is not justifiable.

12. Point No. (ii): Workmen cannot be granted any relief as against the management but the workmen can seek appropriate relief by resorting to Section 89 of the Income Tax Act, 1961.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 23rd day of March, 2015.

D. SREEVALLABHAN, Presiding Officer

APPENDIX

Witness for the unions

WW1 26.11.2014 Shri Muthu P B

Witness for the management - NIL

Exhibit for the unions - NIL

Exhibit for the management - NIL

नई दिल्ली, 7 मई, 2015

का.आ. 1019.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इण्डियन एअरलाइंस लिमिटेड के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 72/06) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/05/2015 को प्राप्त हुआ था।

[सं. एल-11012/55/2006-आई आर (सीएम-1)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 7th May, 2015

S.O. 1019.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 72/06 of the Central Government Industrial Tribunal-Cum-Labour Court Jabalpur as shown in the Annexure in the Industrial Dispute between the management of M/s. Indian Airlines Limited and their workmen, received by the Central Government on 07-05-2015.

[No. L-11012/55/2006-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

No. CGIT/LC/R/72/06

Shri Chhotelal Shivhare,
Sevagram Bard No. 11,
Khajuraho,
Distt. Chhattarpur, MP

....Workman

Versus

General Manager (P),
Indian Airlines Ltd. (N. Region),
I.G.I. Airport, Terminal-I,
New Delhi.

....Management

AWARD

Passed on this 27th day of February 2015

1. As per letter dated 10-11-06 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-11012/55/2006-IR(CM-II). The dispute under reference relates to:

"Whether the action of the management of Indian Airlines Ltd. in doing away with the services of Shri Chhote Lal Shivhare, Staff Bus Driver w.e.f. 20-6-05 instead of regularizing him is just, fair and legal? If not, to what relief is the workman entitled?"

2. After receiving reference, notices were issued to the parties. 1st party workman filed statement of claim at page 5/1 to 5/4. Case of workman is that he was holding driving licence for heavy vehicles issued by RTO Rewa. He belongs to SC. Workman was initially engaged on 1-1-1979 as Driver on staff bus. In 1980, workman submitted application for regular appointment from 6-6-80. He was appointed by IIInd party on post of staff bus driver on monthly salary Rs. 700/- He continuously worked till 20-6-05. His salary was increased to Rs. 1000/-, 1500, 4000, 3500 per month. He was also paid overtime wages Rs. 15/- per over. He worked sincerely and honestly.

3. It is alleged that since February 1981, IIInd party shown him as contractor Chhotelal and sons without changing nature of duty. It is unfair labour practice to victimize him. That statutory contribution of PF was not deducted from his salary. He had completed 25 years continuous service. Workman was thrown out of employment without notice in violation of Section 25-F of ID Act. He was not issued notice. Workman prays for his reinstatement with back wages.

4. IIInd party filed Written Statement at Page 10/1 to 10/4 opposing claim of workman. IIInd party submits that it had entered in contract with Chhotelal and sons for

providing service of Driver at Khajuraho. Workman was engaged by contractor at Khajuraho. Workman is not directly engaged by IIInd party. He is not entitled for regularization of service. In conciliation proceeding dated 3-2-94, it was disclosed that Chhotelal and sons was providing Driver services as contractor. In his representation dated 22-7-82, age of workman was shown 38 years. Workman had crossed age of superannuation. IIInd party reiterated that workman was not directly employed by IIInd party. He was employee of contractor. Therefore workman is not entitled for protection of Section 25-F of ID Act. Workman is not covered under Section 25B of ID Act. Workman is not covered under Section 25B of ID Act. It is denied that workman was illegally terminated. On such ground, IIInd party prays for rejection of claim.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- (i) whether the action of the management of Indian Airlines Ltd in doing away with the services of Shri Chhote Lal Shivhare, Staff Bus Driver w.e.f. 20-6-05 instead of regularizing him is legal and justified?
- (ii) If not, what relief the workman is entitled to?" As per final orders.

REASONS

6. Workman is challenging termination of his service for violation of Section 25-F of ID Act. IIInd party submits that workman was not directly employed. He was employee of contractor M/s Chhotelal and sons therefore he is not entitled to protection of Section 25-F of ID Act. Workman filed affidavit of his evidence supporting his contentions in statement of claim. Workman has stated that he was working as Driver on coach of Indian Airlines from 1979 to 2005. His services are terminated without notice instead of regularizing him. From evidence of workman, documents Exhibit W-1 to W-24 are proved. Workman in his cross-examination says initially he was given appointment orders for driving the coach of Indian Airlines. He has produced those documents on record. His signature was obtained on payment vouchers. In Exhibit W-8, it is shown Chhotelal and sons is signed by him. He claims ignorance about the contents. From June 2005, he had not submitted bill about his working. He denies that he was working as contractor in the name Chhotelal and sons. Management's witness Madanlal filed affidavit of his evidence covering contentions of IIInd party in Written Statement that workman was engaged by M/s Chhotelal and sons with whom IIInd party had entered into contract. Management's

witness in his cross-examination says he cannot produce registration certificate for the year 1982. Chhotelal and sons have no licence under CL (R&A) Act 1970. Chhotelal and sons did not submit half yearly annual returns to IIInd party. There is no record available with IIInd party about annual returns submitted to Controlling Authority. From 16, 17 are not available with IIInd party. The record are misplaced during shifting. Agreement was not found. The wageslips were not given to workman as required under CL(R&A) Act. The witness of management denies that there was no contract with Chhotelal and sons. Workman had not produced any documents about his age. Amount shown in Exhibit W-2 was paid by IIInd party. Witness of management says he did not know whether medical examination of workman was carried. The witness of management admits that workman was engaged for driving tractor and coach at Aerodrome at the time of flying operations. Workman was required to stay at Aerodrome for his work. Mr. Swatantra and Mr. Sidharth might have been the Station Manager. From evidence in cross-examination of management witness it is clear that his evidence is not supported by any documents about contract entered between Chhotelal and sons and IIInd party.

7. Learned counsel for Ist party workman Shri P.C. Chandak pointed out my attention to definition of contractor under CL (R&A) Act, 1970 reproduced below.

Contractor in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour or who supplies contract labour for any work of the establishment and includes a sub-contractor.

The evidence on record clearly shows that workman was himself working as Driver. He did not supply any contract labour to IIInd party therefore the workman is not covered as contractor or contract labour. The documents of contract are not produced. In absence of such documents, workman become direct employee of the IIInd party. His services are terminated without notice though workman was working as Driver from 1980 to 2005. The documents produced by workman Exhibit W-1 Driving Licence, Exhibit W-2 Daily permit and other documents produced shows that management had requested approval to engage workman as part time wager, increase of salary etc. The services of workman are terminated without notice in violation of Section 25-F of ID Act therefore I record my finding in Point No. 1 in Negative.

8. Point No. 2 - In view of my finding in Point No 1, services of workman are terminated in violation of Section 25-F of ID Act, learned counsel for IIInd party alongwith his notes of arguments relies on ratio held in Case of A. Umarani versus Registrar Cooperative societies reported in AIR-2004-SC-4504. The facts of the present are not comparable. Employees in above cited case were appointed dehors the rules ignoring the qualifications, it was held that their services could not be regularized.

In present case, no evidence is brought on record that workman was not fulfilling any clarification for post of Driver, Driving Licence is produced at Exhibit W-1 by workman. Workman was working as Driver with IIInd party since 1980 to 2005 for long about 25 years. Question is whether workman is entitled for reinstatement. The age of workman in his affidavit is shown 59 years. Affidavit was filed on 4-10-10. As such workman has attained age of superannuation. Therefore relief of reinstatement cannot be granted to him. Workman is terminated in violation of Section 25-F of ID Act in the 2005. Considering his age in affidavit of evidence, workman would have attained age of superannuation in the year 2011. Thus workman could have worked for about 6 years. Considering said period and wages paid to workman, in my considered view, compensation Rs. 2 Lakh would be appropriate. Accordingly I record my finding in Point No. 2.

9. In the result, award is passed as under:—

(1) The action of the management of Indian Airlines Ltd is doing away with the services of Shri Chhote Lal Shivhare, Staff Bus Driver w.e.f. 20-6-05 instead of regularizing him is not proper and legal.

(2) IIInd party is directed to pay compensation Rs. 2 Lakh within 30 days from the date of publication of award.

In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1020.—ओद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ओद्योगिक विवाद में केन्द्रीय सरकार ओद्योगिक अधिकरण एवं श्रम न्यायालय, नं. 2, धनबाद के पंचाट (संदर्भ संख्या 148/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-05-2015 को प्राप्त हुआ था।

[सं. एल-20012/267/2000-आईआर (सीएम-1)]

एम् कौ सिंह, अनुभाग अधिकारी

New Delhi, the 7th May, 2015

S.O. 1020.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 148/2000 of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 07-05-2015.

[No. L-20012/267/2000-IR(CM-I)]

M.K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD
PRESENT**

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 148 OF 2000.

PARTIES : The Vice President,
Mazdoor Sangthan Samittee
At: Pachgarhi Bazar,
PO: Katrasgrh, Distt: Dhanbad.
Vs. General Manager,
Kustore Area of M/s BCCL,
PO: Kustore, Distt: Dhanbad..
Ministry's Order No. L-20012/267/2000-(C-1)
dt 25.10.2000.

APPEARANCES:

On behalf of the workwoman/Union : None.

On behalf of the Management : Mr. Nitish Sahay,
Ld. Adv.

State : Jharkhand
Industry : Coal

Dated, Dhanbad, the 31st March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/267/2000-(C-1) dt. 25.10.2000.

SCHEDULE

"Whether the action of the Management of BCCL, Kustore Area is denying promotion to Krishna Nand Singh while his juniors were promoted is just and fair? If not, to what relief is the concerned workman entitled and from what date?"

2. Neither any Representative for the Mazdoor Sangthan Samittee, Pachgarhi Bazar nor workman Krishna Nand Singh appeared just as none appeared for the OP/ Management, Kustore Area of M/s BCCL nor any witness produced on behalf of the OP/Management.

On perusal of the case record, I find the evidence of the workman was already closed on 28th Sept., 2004, since then it has been running for evidence of the OP/ Management which appears to be quite useless, as the Reference relates to an issue about the promotion of the workman. Even after the registered notice dt. 24.11.2014 to the Vice President of the Union concerned on his address

noted in the reference itself, none could respond to the notice in this case. It is the oldest case of the year 2000. The Union Representative and the workman by their reluctant acts appear to be quite unwilling or uninterested to contest the case.

Under these circumstances, it seems no longer the Industrial Dispute; hence the case is closed as no I.D. and accordingly it is passed an order of 'No Dispute Award.'

KISHORI RAM, Presiding Officer.

नई दिल्ली, 7 मई, 2015

का.आ. 1021.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बीसीसीएल के प्रबंधतत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं. 2, धनबाद के पंचाट (संदर्भ संख्या 40/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 07/05/2015 को प्राप्त हुआ था।

[सं. एल-20012/64/2007-आईआर (सीएम-1)]

एम् के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th May, 2015

S.O. 1021.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award Ref. 40/2007 of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 07-05-2015.

[No. L-20012/64/2007-IR(CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

PRESENT

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

REFERENCE NO. 40 OF 2007

PARTIES : The Vice President,
Janta Mazdoor Sangh
At: Vihar Building Jharia, Dhanbad

Vs.

Area Manager,
B.T.A of M/s BCCL, PO: Bhuli, Dhanbad
Ministry's Order No. L-20012/64/2007-
IR(CM-I) dt 23.7.2007

SCHEDULE

"Whether the action of the Management of BCCL, Block-II Area in non regularization of Sri Doman Mahato as Loading Munshi and reverting him back to the original job as Fireman after 16 to 17 years is justified, legal & proper? If not, to what relief is the workman entitled and from what date?"

2. Neither any Representative for the Mazdoor Sangthan Samittee, Pachgarhi Bazar nor workman Doman Mahato appeared nor any witness for the evidence of the workman produced despite the last chance for it. Mr. D.K. Verma, the Ld. Advocate for the OP/Management of Block II Area of M/s BCCL, Nawagrath is present. After going through the case record, it appears that the case has been all along pending for the evidence of the workman at the issue of his non-regularization as Loading Munshi. Though three Regd. Notices dt. 25.08.2014, 20.11.2014 and lastly 02.02.2015 have been issued to the Vice President of the Union concerned on the same address as noted in the Reference itself, yet no response whatsoever to any notice issued by the Tribunal. The perusal of the case records also reveals that it has been pending for the evidence of the workman since 18.09.2007. The Union representative and the workman by their own conducts appear to be not at all interested to contest the case for its finality in adjudication.

Under these circumstances, it seems no longer an Industrial Dispute; hence the case is accordingly closed, and I issue an order of "No Dispute Award".

KISHORI RAM, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1023.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय नं 2, धनबाद के पंचाट (संदर्भ संख्या 44/1996) प्रकाशित करती है जो केन्द्रीय सरकार को 07/05/2015 को प्राप्त हुआ था।

[सं. एल-20012/103/1995-आईआर (सीएम-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th May, 2015

S.O. 1023.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award Ref. No. 44/1996 of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Dhanbad as shown in the Annexure in the Industrial Dispute between the management of M/s. BCCL and their workman, received by the Central Government on 07/05/2015.

[No. L-20012/103/1995-IR (CM-I)]
M. K. SINGH, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD****PRESENT**

Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

REFERENCE NO. 44 of 1996

PARTIES : The Joint Area Secretary, Bihar Colliery Kamgar Union, Bhowra Colliery, PO: Bhowra, Distt: Dhanbad.

Vs.

The General Manager, Bhowra Area of M/s BCCL PO: Bhowra, Distt: Dhanbad.. Ministry's Order No. L-20012/103/95-I.R. (C-1) dt 19.03.1996.

APPEARANCES:

On behalf of the workwoman/Union : None

On behalf of the Management : Mr. U.N. Lal, Ld. Adv.

State : Jharkhand
Industry : Coal

Dated, Dhanbad, the 10th March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/103/95-I.R. (Coal-I) dt. 19.03.1996.

SCHEDULE

"Whether the action of the management of Bhowra Colliery of M/s BCCL in dismissing from service of Shri Nepal Hari, Ex-Sweeper is justified? If not, to what relief the concerned workman is entitled?"

2. Neither any Union Representative for Bihar Colliery Kamgar Union, Bhowra Colliery, Dhanbad nor workman Nepal Hari Ex-Sweeper appeared nor any witness on behalf of the Management produced though Mr. U.N. Lal, the Ld. Advocate for the OP/Management of Bhowra Area present with his authority.

On perusal of the case record, I find this is the oldest case of the year 1990, which has been pending for ex-party evidence of the Management all along since 04.11.2003. Even thereafter despite three Regd. Notices dt. 10.04.14,

12.05.2014 and 25.11.2014 to the Joint Regional Secretary as well as to the Management on their respective addresses as noted in the reference itself, none could appear on behalf of the workman in the reference which is related to an issue of dismissal. Under these circumstances, it seems no longer an Industrial Dispute; hence the case is closed as No Industrial Dispute existing, and accordingly it is passed an order of 'No Industrial Dispute'.

KISHORI RAM, Presiding Officer

नई दिल्ली, 7 मई, 2015

का.आ. 1024.—ऑद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बीसीसीएल के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण / श्रम न्यायालय नं 2, धनबाद के पंचाट (संदर्भ संख्या 257/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 07/05/2015 को प्राप्त हुआ था।

[सं. एल-20012/469/1998-आई आर (सीएम-1)]
एम० के० सिंह, अनुभाग अधिकारी

New Delhi, the 7th May, 2015

S.O. 1024.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 257/1999) of the Central Government Industrial Tribunal-Cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the management of M/s. BCCL and their workman, which was received by the Central Government on 07-05-2015.

[No. L-20012/469/1998-IR(CM-I)]
M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri Kishori Ram, President Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947.

REFERENCE NO. 257 of 1999

PARTIES : The General Secretary, Koyla Ispat Mazdoor Panchayat, P.O. : Jharia (Dhanbad)

Vs.

The General Manager, Govindpur Area No. III of M/s BCCL
PO : Sonardih, Dhanbad
Ministry's Order No. L-20012/469/98.I.R. (C-1) dt 4.6.1999.

APPEARANCES:

On behalf of the workwoman/Union : Mr. S.C. Gaur, Ld. Adv.

On behalf of the Management : Mr. D.K. Verma, Ld. Adv.

State : Jharkhand
Industry : Coal

Dated, Dhanbad, the 27th March, 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec. 10(1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication *vide* their Order No. L-20012/469/98-IR(C-I) dt. 4.6.1999.

SCHEDULE

"Whether the action of the Management of Govindpur Area No. III of M/s BCCL to deny reinstatement in services with full back wages and all consequential benefits to Shri Kedar Singh is justified? if not, what relief the concerned workman is entitled to?"

2. Neither the Union Representaitve for the Koyla ispat Mazdoor Panchayat nor workman Kedar Singh appeared nor any witness for the evidence of the workman produced, despite the last chance Mr. D.K. Verma, Lt. Advocate for the OP/Managewment of Govindpur Area-III is present.

On perusal of the case record, it is quite clear that the case has been pending for the evidence of the workman all along since 01.11.2004, for which three registered notices dt. 13.06.2014, 02.08.2014 and 27.01.2015 apart from the earlieft ones were issued to the General Secretary of the Union on his address noted in the Reference itself. But till now, no response came from the Union Representative or the workman. Such the conducts of the Union Representative and the workman concerned *prima facie* denote the fact that they are not willing to contest the case for final adjudication over the issue of the action of the Management denying the reinstatement of the workman in his service with full back wages etc.

Under these circumstances, it is held that it is no longer an industrial Dispute; hence an order of 'No Dispute Award' is passed .

KISHORI RAM, Presiding Officer

नई दिल्ली, 8 मई, 2015

का.आ. 1025.—राष्ट्रपति, केन्द्रीय सरकार ऑद्योगिक अधिकरण-सह-श्रम न्यायालय, बंगलौर के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार ऑद्योगिक अधिकरण-सह-श्रम न्यायालय नं 2, दिल्ली के पीठासीन अधिकारी श्री हरबंश कुमार सक्सेना

को तीन माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सौंपते हैं।

[सं. ए-11016/03/2009—सीएलएस-II]
एस० के० सिंह, अवर सचिव

New Delhi, the 8th May, 2015

S.O. 1025.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Bangalore to Shri Harbans Kumar Saxena, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, No. 2, New Delhi for a period of three months or till the post is filled on regular basis, whichever is earlier.

[No. A-11016/03/2009/CLS-II]
S. K. SINGH, Under Secy.

नई दिल्ली, 8 मई, 2015

का.आ. 1026.—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, हैदराबाद के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय नं० 2, धनबाद के पीठासीन अधिकारी श्री किशोरी राम को तीन माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सौंपते हैं।

[सं. ए-11016/03/2009—सीएलएस-II]
एस० के० सिंह, अवर सचिव

New Delhi, the 8th May, 2015

S.O. 1026.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad to Shri Kishori Ram Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, No. 2, Dhanbad for a period of three months or till the post is filled on regular basis, whichever is earlier.

[No. A-11016/03/2009/CLS-II]
S. K. SINGH, Under Secy.

नई दिल्ली, 8 मई, 2015

का.आ. 1027.—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, एरनाकुलम के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय चेन्नई के पीठासीन अधिकारी सुश्री के. पी. प्रसन्ना कुमारी को छह माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक, इनमें से जो भी पहले हो तब तक के लिए अतिरिक्त कार्यभार सौंपते हैं।

[सं. ए-11016/03/2009—सीएलएस-II]
एस० के० सिंह, अवर सचिव

New Delhi, the 8th May, 2015

S.O. 1027.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam w.e.f. 25.05.2015 to Ms. K. P. Prasanna Kumari Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Chennai for a period of six months or till the post is filled on regular basis, whichever is earlier.

[No. A-11016/03/2009/CLS-II]
S. K. SINGH, Under Secy.

नई दिल्ली, 11 मई, 2015

का.आ. 1028.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एनएलसी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 52/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 11/05/2015 को प्राप्त हुआ था।

[सं. एल-22013/1/2015-आईआर (सी-2)]
मो० जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 11th May, 2015

S.O. 1028.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-Cum-Labour Court Chennai (52/2013) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the NLC and their workman, which was received by the Central Government on 11/05/2015.

[No. L-22013/1/2015-IR (C-II)]
MD. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT CHENNAI

Monday, the 1st December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer
Industrial Dispute No. 52/2013

(In the matter of the dispute for adjudication under clause 2 (A) (2) (1) of the Industrial Disputes Act, 1947 (as amended by Act-24 of 2010 w.e.f. 15.09.2010) between the Management of Neyveli Lignite Corporation Ltd., and Two Others and their workman)

BETWEEN

Sri S. Ulaganathan 1st Party/Petitioner

AND

1. The Chief General Manager : 2nd Party/1st Respondent
Administrative Officer, Mines-II
Neyveli Lignite Corporation
Neyveli
Cuddalore District

2. Thirumurugan Enterprises : 2nd Party/2nd Respondent
NLC Register Contractor,
G.P. Nagar Periyakurichi
Neyveli-607802

3. The Special Officer : 2nd Party/3rd Respondent
Management of Indco-Serve
Opp. Themal Station
Neyveli-607807

Appearance:

For the 1st Party/ Petitioner : M/s T. Sivagnanasambandam,
V. Rajeshwari, Advocates

For the 2nd Party/ 1st Management : M/s NAK Sarma & N. Nithianandam,
Advocates

For the 2nd Party/ 2nd Management : Sri D. Muthukumar, Advocate

For the 2nd Party/ 3rd Management : M/s T.S. Gopaiyan & Co. Advocates

AWARD

This is an Industrial Dispute taken for adjudication on the file under Sub-Section 2A (2) of Section-10 of the Industrial Disputes Act, 1947.

2. The prayer of the petitioner in the Claim Statement is to direct the Respondents to implement certain demands raised by him in his demand letter dated 02.02.2012 and to reinstate him with back wages. The Respondents have entered appearance and filed counter statements.

3. The petition which was filed as early as in May 2013 has reached the stage of enquiry long ago. The petitioner has been getting adjournment of the matter requesting time for adducing evidence. In spite of repeated postponements, the petitioner has not been ready to lead evidence in the case. He seems to be not interested in proceeding with the matter. There is no meaning in going on postponing the case. In the absence of any material in support of the case of the petitioner, the petition is to be answered against the petitioner.

Accordingly, the petition is dismissed.

(Dictated to the P.A. transcribed and typed by him, corrected and pronounced of me in the open court on this 1st day of December, 2014)

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : None

For the 2nd Party/1st, 2nd & 3rd Management : None

Documents Marked:**On the petitioner's side**

Ex.No.	Date	Description
	Nil	

On the Management's side

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 11 मई, 2015

का.आ. 1029.—ऑद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एक सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट ऑद्योगिक विवाद में केन्द्रीय सरकार ऑद्योगिक अधिकरण/श्रम न्यायालय कानपुर के पंचाट (संदर्भ संख्या 92/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/05/2015 को प्राप्त हुआ था।

[सं. एल-22011/21/2011-आईआर (सीएम-II)]
मो. जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 11th May, 2015

S.O. 1029.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 92/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, TC/3C, and their workmen, received by the Central Government on 11/5/2015.

[No. L-22011/21/2011-IR(CM-II)]
MD. ZAHID SHARIF, Section Officer

ANNEXURE

**BEFORE THE PRESIDING OFFICER,
CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, KANPUR.**

Present : Sri Shubhendra Kumar, HJS

Industrial Dispute No. 92 of 2011**Between—**

The General Secretary,
Food Corporation of India Handling Workers Union,
8651, Arakshan Road,
Pahar Ganj,
New Delhi—55.

And

The General Manager,
Food Corporation of India,
TC/3C, Vibhuti Khand,
Gomti Nagar,
Lucknow-206010.

AWARD

1. Central Government, Mol, New Delhi, vide notification No. L-22011/21/2011-IR(CM-II) dated 13.10.2011, has referred the following dispute for adjudication to this tribunal—

2. Where the action of the management of Food Corporation of India, Lucknow, in not regularizing the services of contract labourers working in the notified

depots as per notification No. 947(E) dated 23.04.2010 is just & fair? To what relief the concerned labourers are entitled to?

3. In the instant case after exchange of pleadings between the parties when the case was taken up for hearing on 29.07.2013, neither the union nor their workers were present nor did file any further documents in the case whereas the opposite party has filed their documents, hence opportunity of workers union for filing documents was closed by the tribunal and the case was fixed for evidence of parties. The instant case was again taken up for hearing on 30.12.2013, neither any one on behalf of the union appeared before the tribunal nor any evidence was adduced by the union in support of their claim, therefore, the opportunity for adducing evidence by the union was closed. Being so the opposite party also submitted before the tribunal that they too did not willing to file any evidence in the case.

4. It may be pointed out above that from the facts and circumstances of the case it would hardly be necessary to give full details of the case set up by the contesting parties as apparently it is quite obvious that the union raising the present dispute is not willing to contest the case. Documents filed by the parties cannot be accepted to be a valid piece of evidence unless proved by the witness before the tribunal.

5. Therefore, the case was fixed for hearing arguments and finally arguments in the case were heard on behalf of the opposite party. During the course of arguments the representative for the management has placed heavy reliance on the decision of Hon'ble High Court of judicature at Allahabad, reported 1981(29) V.K. Raj industries v. Labour Court, wherein the Hon'ble Court has held—workman not appearing nor producing evidence before Labour Court—Labour Court had no jurisdiction to hold order illegal—Award of Labour Court set aside.

6. Considering the facts and circumstances of the case in its entirity coupled with the decision of the Hon'ble High Court, Allahabad (supra), it is held that the union has failed to establish its case before the tribunal, therefore, the union cannot be held entitled for any relief as claimed by them in the present reference for want of evidence and proof.

7. Therefore, the claim of the union fails and as such the reference is decided against the union holding that the union is not entitled to seek any relief pursuant to the present reference order.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 11 मई, 2015

का.आ. 1030.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डब्ल्यू सी० एल०

के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 3/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11/05/2015 को प्राप्त हुआ था

[सं एल-22012/143/2013-आईआर (सी-II)]

मेरा जाहिद शरीफ, अनुभाग अधिकारी

New Delhi, the 11 May, 2015

S.O. 1030.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 3/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Western Coal Limited, Mahadevpuri, Khan, and their workmen, received by the Central Government on 11/05/2015.

[No.L-22012/143/2013-IR(C-II)]

Md. ZAHID SHARIF, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/3/2014

General Secretary,
Joint Coal Mazdoor Sangh (INTUC),
Iklahra,
Distt. Chhindwara (MP)Workman/Union

Versus

Manager,
Western Coalfields Limited,
Mahadevpuri Khan,
Pench Region, Parasia,
Chhindwara (MP)Management

AWARD

Passed on this 16th day of April 2015

As per letter dated 9-12-2013 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-22012/143/2013-IR(C-II). The dispute under reference relates to:

"Whether the action of the management of Western Coalfields Limited in terminating the services of Shri Vinit Kumar, s/o Late Shri Hiralal, Tokan No. 917 is legal and justified? If not, to what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issued to the parties. However General Secretary of Union Mahendra Chatterjee instead of filing statement of claim submitted

application that workman Vinit Kumar does not want to prosecute his claim. The application signed by Vinit Kumar is enclosed with the application.

3. Management has given no objection. As such the dispute between parties could not be adjudicated regarding their evidence.

4. In the result, No Dispute Award is passed.

R. B. PATLE, Presiding Officer

नई दिल्ली, 14 मई, 2015

का.आ. 1031.—जबकि मैसर्स जुबिलियन्ट एग्री एण्ड कंज्यूमर प्रोइक्ट्स लिमिटेड (उप क्षेत्रीय कार्यालय, नोएडा के कोड संख्या यूपी/55698 के अंतर्गत) (इसके पश्चात उक्त प्रतिष्ठान के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात उक्त अधिनियम के रूप में उल्लिखित) की धारा 17 की उप धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी अन्य भविष्य में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं है।

3. अतः, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप धारा (1) के खण्ड (क) द्वारा प्रदान शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01.02.2012 से उक्त योजना के सभी उपबंधों के प्रभाव से छुट प्रदान करती है।

[सं एस-35015/103/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छुट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, “नियोक्ता” से:-

(i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और

(ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा।

3. अधिनियम की धारा 2 (च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं, यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्हीं देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे साविधिक सीमा तक लाना होगा।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के अन्यमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा।

9. प्रतिष्ठान के भविष्य नियमों के अंतर्गत निर्धारित देश अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य सामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लियत रहते उन पर स्वतः लागू किया जाएगा। क्षेत्रीय

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय

भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शनी के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानतः इलैक्ट्रोनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रोनिक रूप से सम्प्रेषित करेंगे।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छः माह के भीतर प्रत्येक कर्मचारी को निःशुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटऑफ नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्यतन किया जाएगा।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डक कार्रवाई के भागी होंगे।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा।

18. (क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभैतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा।

(ग) डीमेट खात इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय व्यय माना जाए। प्रतिभूतियों आदि की खरीद की दलाली

जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसी सभी निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे। स्थापना की बंदी या परिसमाप्त या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के, अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिसके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश दर्ज किए गए हैं। तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्तोंधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने की स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा। यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा।

24. (क) न्यासी द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्तोंधीन होगा। जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए। तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की

जाएगी तथा संबंधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूँजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हैं।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओं नोटिस जारी करने के बाद रद्द कर दी जाएगी।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुई किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णतः स्वामित्व वाली हो या नहीं इत्यादि के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए।

30. एक ही भविष्य निधि ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाईयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से एवं अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. छूट प्राप्त न्यास निधि के अधिग्रहण के मामले में, अंतरीय ब्याज के कारण हानि के अनुमानित निवल वर्तमान मूल्य की वसूली प्रतिष्ठान से की जानी चाहिए।

32. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे।

New Delhi, the 14th May, 2015

S.O. 1031.—Whereas M/s Jubilant Agri & Consumer Products Limited [under Code No. UP/55698 in Sub-Regional Office, Noida] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said

establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01.02.2012 until further notification.

[No. S-35015/103/2014-SS-II]
SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean:—

- (i) In relation to an establishment, which is a factory, the owner or occupier of the factory; and
- (ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in section 2(f) of the act, who have been eligible to become members of the Provident Fund had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange

to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues toward the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically.

The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of

India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This shall be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. In case of takeover of the exempted Trust Fund, estimated net present value of the loss due to differential interest should be recovered from the establishment.

32. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 14 मई, 2015

का.आ. 1032.—जबकि मैसर्स जिनियस कंसलटेंट्स लिमिटेड [उप क्षेत्रीय कार्यालय, पार्क स्ट्रीट के कोड संख्या डब्ल्यूबी/34609 के अंतर्गत] (इसके पश्चात उक्त प्रतिष्ठा के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकीर्ण उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात उक्त अधिनियम के रूप में उल्लिखित) की धारा 17 की उप-धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं हैं और कर्मचारी अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं कुल मिलाकर इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं हैं।

3. अतः, अब, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदान शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01.01.2008 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है।

[सं एस-35015/86/2014-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निदेशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होंगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, “नियोक्ता” से:-

- (i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और
- (ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय-समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा।

3. अधिनियम की धारा 2 (च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं, यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता ऐसे

कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्हीं देयों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7 थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देय अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लिये रहते उन पर स्वतः लागू किया जाएगा।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रूख स्पष्ट करने का वाजिब अवसर देगा।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय सीमा के भीतर, शीघ्रता से निपटाए जाएंगे।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शनी के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानतः इलैक्ट्रॉनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छः माह के भीतर प्रत्येक कर्मचारी को निःशुल्क लेखों का वार्षिक

विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटऑफ नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्ययतन किया जाएगा।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाण्डक कार्रवाई के भागी होंगे।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिकारियों द्वारा यथा अधिकारी भविष्य निधि आयुक्त का भागी बन जाएगा।

18. (क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे।

(ख) न्यासी बोर्ड लिपि-वार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा।

(ग) डीमेट खात इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय व्यय माना जाए। प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसी सभी निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे। स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के, अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिसके पास तथा जिनकी

सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश अर्थात प्रतिभूतियों, बाण्डों आदि में किए गए निवेश दर्ज किए गए हैं। तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्तोंधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य आर्थिक लाभ इसके खाते में डाले जाएं।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने की स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा। यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा।

24. (क) न्यासी द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्तोंधीन होगा। जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए। तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबंधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूँजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओं नोटिस जारी करने के बाद रद्द कर दी जाएगी।

28. किसी भी धोखे, गवन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुई किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णतः स्वामित्व वाली हो या नहीं इत्यादि के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए।

30. एक ही भविष्य निधि ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाईयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से एवं अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. छूट प्राप्त न्यास निधि के अधिग्रहण के मामले में, अंतीय ब्याज के कारण हानि के अनुमानित निवल वर्तमान मूल्य की वसूली प्रतिष्ठान से की जानी चाहिए।

32. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे।

New Delhi, the 14th May, 2015

S.O. 1032.—Whereas M/s Genius Consultants Limited [under Code No. WB/34609 in Sub-Regional Office, Park Street] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01.01.2008 until further notification.

[No. S-35015/86/2001-SS-II]

SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, inter alia, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean:—

- (i) In relation to an establishment, which is a factory, the owner or occupier of the factory; and
- (ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in section 2(f) of the act, who have been eligible to become members of the Provident Fund had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues toward the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by them.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time to time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, viz., investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/

her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually. Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time to time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of Trustees, the relaxation granted shall be cancelled after issuing a show cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. In case of takeover of the exempted Trust Fund, estimated net present value of the loss due to differential interest should be recovered from the establishment.

32. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.

नई दिल्ली, 14 मई, 2015

का.आ. 1033.—जबकि मैरसर्स भारतीय रिजर्व बैंक नोट मुद्रण प्राइवेट लिमिटेड [क्षेत्रीय कार्यालय, कर्नाटक के कोड संख्या केन्द्र/19774 के अंतर्गत] (इसके पश्चात उक्त प्रतिष्ठा के रूप में उल्लिखित) ने कर्मचारी भविष्य निधि और प्रकारी उपबंध अधिनियम, 1952 (1952 का 19) (इसके पश्चात उक्त अधिनियम के रूप में उल्लिखित) की धारा 17 की उप धारा (1) के खण्ड (क) के अंतर्गत छूट के लिए आवेदन किया है।

2. और जबकि केन्द्र सरकार के विचार में अंशदान की दरों के संबंध में उक्त प्रतिष्ठान के भविष्य निधि नियम उक्त अधिनियम की धारा 6 में उल्लिखित की तुलना में कर्मचारियों के लिए कम अनुकूल नहीं है और कर्मचारी अन्य भविष्य निधि लाभों का फायदा उठा रहे हैं कुल मिलाकर इसी प्रकार के किसी अन्य प्रतिष्ठान में कर्मचारियों के संबंध में उक्त अधिनियम के अंतर्गत अथवा कर्मचारी भविष्य निधि स्कीम, 1952 (इसके पश्चात उक्त स्कीम के रूप में उल्लिखित) के अंतर्गत प्रदान किए जा रहे लाभों की तुलना में कम अनुकूल नहीं है।

3. अतः, केन्द्र सरकार उक्त अधिनियम की धारा 17 की उप-धारा (1) के खण्ड (क) द्वारा प्रदान शक्तियों का प्रयोग करते हुए, इस अधिसूचना के साथ संलग्न शर्तों के अध्याधीन उक्त प्रतिष्ठान को अगली अधिसूचना तक 01.03.1997 से उक्त योजना के सभी उपबंधों के प्रभाव से छूट प्रदान करती है।

[सं. एस-35015/4/2001-एसएस-II]

सुभाष कुमार, अवर सचिव

अनुबंध

कर्मचारी भविष्य निधि योजना, 1952 के उपबंधों से छूट प्रदान करने संबंधी शर्तें

1. नियोक्ता समय-समय पर केन्द्रीय सरकार अथवा केन्द्रीय भविष्य निधि आयुक्त, जैसी भी स्थिति हो, द्वारा दिए जाने वाले ऐसे निर्देशों के अनुसार भविष्य निधि के प्रबंधन हेतु अपनी अध्यक्षता में एक न्यासी बोर्ड गठित करेगा। भविष्य निधि न्यासी बोर्ड में विहित होगी जो अन्य बातों के साथ-साथ कर्मचारी भविष्य निधि संगठन के प्रति भविष्य निधि में प्राप्तियों और उसमें से भुगतान के उचित लेखों और उनकी अभिरक्षा में शेष राशि के लिए उत्तरदायी होगा। इस प्रयोजनार्थ, “नियोक्ता” से—

- (i) किसी प्रतिष्ठान, जो एक कारखाना हो, उसके संबंध में, कारखाने का स्वामी अथवा अधिष्ठाता अभिप्रेत होगा; और
- (ii) किसी अन्य प्रतिष्ठान के संबंध में, वह व्यक्ति, अथवा प्राधिकारी अभिप्रेत होगा, जिसका उस प्रतिष्ठान के कामकाज पर अंतिम नियंत्रण हो।

2. न्यासी बोर्ड हरेक तिमाही में कम से कम एक बार बैठक करेगा और वह केन्द्र सरकार/केन्द्रीय भविष्य निधि आयुक्त (सीपीएफसी) अथवा उसके द्वारा प्राधिकृत किसी अधिकारी द्वारा समय समय पर जारी किए जाने वाले दिशानिर्देशों के अनुसार कार्य करेगा।

3. अधिनियम की धारा 2 (च) में यथा परिभाषित सभी कर्मचारी, जो भविष्य निधि के सदस्य बनने के पात्र रहे हैं, यदि प्रतिष्ठान को छूट प्रदान नहीं की होती, उन्हें सदस्यों के रूप में नामांकित किया जाएगा।

4. जहां कोई कर्मचारी जो पहले ही किसी अन्य छूट-प्राप्त प्रतिष्ठान के किसी कर्मचारी भविष्य निधि अथवा भविष्य निधि का सदस्य हो, उसे उसके प्रतिष्ठान में नियोजित किया जाता है, तो नियोक्ता उसे तत्काल निधि के सदस्य के रूप में नामांकित करेगा। नियोक्ता ऐसे कर्मचारी के भविष्य निधि खाते में उसके पहले नियोक्ता से संचय राशियां अंतरित और जमा करवाने की भी व्यवस्था करेगा।

5. नियोक्ता भविष्य निधि को उसके द्वारा और कर्मचारी के द्वारा समय-समय पर अधिनियम के अंतर्गत निर्धारित दर से देय अंशदान को, जिस माह के लिए अंशदान देय हों उसके बाद के माह की 15 तारीख तक न्यासी बोर्ड को अंतरित करेगा। नियोक्ता न्यासी बोर्ड को किन्हीं देवों के भुगतान में किसी विलम्ब के लिए अधिनियम की धारा 7 थ के उपबंधों के अनुसार साधारण ब्याज अदा करने का दायी होगा।

6. नियोक्ता भविष्य निधि के प्रशासन के सभी व्यय वहन करेगा और चोरी, डकैती, गबन, दुर्विनियोग अथवा किसी अन्य कारण से भविष्य निधि को हो सकने वाले किसी घाटे की भी भरपाई करेगा।

7. न्यासी बोर्ड द्वारा घोषित ब्याज में किसी कमी को भी नियोक्ता द्वारा पूरा किया जाना होगा और उसे सांविधिक सीमा तक लाना होगा।

8. नियोक्ता जब कभी नियम संशोधित किए जाएं, समुचित प्राधिकारी द्वारा यथा अनुमोदित, निधि के नियमों की एक प्रति अधिसंख्यक कर्मचारियों की भाषा में उनके अनुवाद सहित प्रतिष्ठान के सूचना पट पर प्रदर्शित करेगा।

9. प्रतिष्ठान के भविष्य निधि नियमों के अंतर्गत निर्धारित देश अंशदान की दर, अग्रिम की शर्तें और मात्रा तथा अन्य मामले और सदस्य के मासिक चालू शेष पर संगणित और न्यासी बोर्ड द्वारा घोषित, प्रत्येक सदस्य के खाते में जमा किया गया ब्याज, अधिनियम और उसके अंतर्गत निर्मित योजना में निर्धारित विभिन्न उपबंधों के अंतर्गत केन्द्र सरकार द्वारा घोषित दर से कम नहीं होगा।

10. योजना में कोई संशोधन, जो प्रतिष्ठान के विद्यमान नियमों की तुलना में कर्मचारियों के लिए अधिक लाभदायक हो, उसे न्यास के नियमों में औपचारिक संशोधन के लिए रहते उन पर स्वतः लागू किया जाएगा।

11. नियोक्ता द्वारा नियमों में कोई भी संशोधन क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के बिना नहीं किया जाएगा। क्षेत्रीय भविष्य निधि आयुक्त अपना अनुमोदन देने से पूर्व कर्मचारियों को अपना रुख स्पष्ट करने का वाजिब अवसर देगा।

12. निकासी, अग्रिम और अंतरण के सभी दावे कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित अधिकतम समय-सीमा के भीतर, शीघ्रता से निपटाए जाएंगे।

13. न्यासी बोर्ड प्रत्येक कर्मचारी के संबंध में जमा किए गए अंशदान, निकासी और ब्याज दर्शने के लिए विस्तरित लेखों का रख-रखाव करेगा। ऐसे अभिलेखों का रख-रखाव अधिमानत: इलैक्ट्रॉनिक रूप से रखा जाएगा। प्रतिष्ठान आवधिक रूप से जब कभी केन्द्रीय भविष्य निधि आयुक्त/क्षेत्रीय भविष्य निधि आयुक्त द्वारा निदेश दिया जाए, सदस्यों के लेखों को इलैक्ट्रॉनिक रूप से सम्प्रेषित करेंगे।

14. न्यासी बोर्ड वर्ष में एक बार वित्तीय/लेखा वर्ष के समाप्त होने के छ: माह के भीतर प्रत्येक कर्मचारी को निःशुल्क लेखों का वार्षिक विवरण अथवा पासबुक जारी करेगा। जब कभी सदस्य चाहें, अतिरिक्त प्रिंटऑफ नाममात्र के प्रभार के साथ उपलब्ध कराए जा सकते हैं। पासबुक के मामले में वह कर्मचारी के पास रहेगी जिसे प्रस्तुत किए जाने पर न्यासियों द्वारा आवधिक रूप से अद्ययतन किया जाएगा।

15. नियोक्ता सभी सदस्यों को उनकी आवश्यकतानुसार कम्प्यूटर टर्मिनलों से अपने खाते में पड़ी शेष राशि को देखने के समर्थ बनाने के लिए आवश्यक प्रावधान करेंगे।

16. न्यासी बोर्ड और नियोक्ता कर्मचारी भविष्य निधि संगठन द्वारा यथा विहित रूप में ये विवरणियां विनिर्दिष्ट समय-सीमा के भीतर मासिक/वार्षिक रूप से दायर करेंगे, जिसे न करने पर इसे चूक माना जाएगा तथा न्यासी बोर्ड और नियोक्ता संयुक्त रूप से और अलग-अलग, कर्मचारी भविष्य निधि संगठन द्वारा की जाने वाली उपयुक्त दाप्तिक कार्रवाई के भागी होंगे।

17. न्यासी बोर्ड समय-समय पर सरकार के निर्देशों के अनुसार भविष्य निधि के पैसे का निवेश करेगा। सरकार के निर्देशों के अनुसार निवेश करने में असफल होने पर न्यासी बोर्ड अलग-अलग और संयुक्त रूप से केन्द्रीय भविष्य निधि आयुक्त या उसके प्रतिनिधि द्वारा यथा अधिरोपित अधिशुल्क का भागी बन जाएगा।

18. (क) प्रतिभूतियां न्यास के नाम से प्राप्त की जाएंगी। इस प्रकार प्राप्त की गई प्रतिभूतियां अभौतिक (डीमेट) रूप में होनी चाहिए तथा न्यास के कार्यचालित रहने वाले क्षेत्रों में अपेक्षित सुविधा के उपलब्ध न होने की स्थिति में न्यासी बोर्ड संबंधित क्षेत्रीय भविष्य निधि आयुक्त को इसकी सूचना देंगे।

(ख) न्यासी बोर्ड लिपि-बार रजिस्टर बनाएगा तथा ब्याज की समय पर उगाही सुनिश्चित करेगा।

(ग) डीमेट खाता इस संबंध में केन्द्रीय सरकार द्वारा जारी अनुदेशों के अनुसार भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों के माध्यम से खोला जाए।

(घ) डीमेट खाते का खर्च न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाए। प्रतिभूतियों आदि की खरीद की दलाली जैसे निवेशों के सभी प्रकार के खर्चों को भी न्यास द्वारा किए जाने वाले निवेश का प्रासंगिक व्यय माना जाएगा।

19. प्रतिभूतियों और बाण्डों की खरीद जैसे ऐसी सभी निवेश भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित निक्षेपागार प्रतिभागियों की सुरक्षा अभिरक्षा में दर्ज किए जाएं, जो इसके संरक्षक होंगे। स्थापना की बंदी या परिसमापन या कर्मचारी भविष्य निधि, 1952 से छूट पर यह संरक्षक, न्यास के नाम पर प्राप्त तथा अपने जमा में पड़े निवेश को संबंधित क्षेत्रीय भविष्य निधि आयुक्त के, इस आशय के, अनुरोध पर संबंधित क्षेत्रीय भविष्य निधि आयुक्त को सीधे अंतरित करेगा।

20. स्थापना संबंधित क्षेत्रीय भविष्य निधि आयुक्त को उन निक्षेपागार प्रतिभागियों (भारतीय रिजर्व बैंक और केन्द्रीय सरकार द्वारा अनुमोदित) के विवरण से सूचित करेगी, जिसके पास तथा जिनकी सुरक्षा अभिरक्षा में न्यास के नाम पर किए गए निवेश दर्ज किए गए हैं। तथापि, न्यासी बोर्ड उस धनराशि की उगाही कर सकता है, जो दावों के निपटान, नियमानुसार अग्रिमों की मंजूरी और नियोक्ता की सेवा छोड़ने की स्थिति में सदस्य के भविष्य निधि संचयन के अंतरण और प्रतिभूतियों की बिक्री द्वारा अन्य किसी प्राप्तियों अथवा क्षेत्रीय भविष्य निधि आयुक्त के पूर्व अनुमोदन के शर्तोंधीन निधि के नाम में पड़े अन्य निवेशों जैसे बाध्यकारी व्ययों को पूरा करने के लिए अपेक्षित हों।

21. न्यास द्वारा किए गए निवेशों के लिए किसी वित्तीय या अन्य संस्थाओं द्वारा दिए जाने वाले किसी कमीशन, प्रोत्साहन, बोनस या अन्य अर्थिक लाभ इसके खाते में डाले जाएं।

22. नियोक्ता और न्यासी बोर्ड के सदस्य शर्तों का पालन करने की सहमति देते हुए लिखित वचन देंगे तथा यह वैधिक रूप से नियोक्ता और न्यासी बोर्ड के उत्तराधिकारियों और समनुदेशियों पर उनके साथ-साथ बाध्यकारी होगा।

23. नियोक्ता और न्यासी बोर्ड छूट के रद्द होने की स्थिति में संबंधित क्षेत्रीय भविष्य निधि आयुक्त द्वारा विहित समय सीमा के भीतर तत्काल निधियों का अंतरण करने का वचन भी देगा। यह उन पर कानूनी रूप से बाध्यकारी होगा तथा उन्हें निधियों के अंतरण में कोई विलंब होने की स्थिति में अभियोजन का भागी बनाएगा।

24. (क) न्यासी द्वारा अनुरक्षित भविष्य निधि खाता किसी योग्य स्वतंत्र चार्टर्ड लेखाकार द्वारा वार्षिक रूप से लेखा-परीक्षा करने के शर्तोंधीन होगा। जहां भी आवश्यक समझा जाए, वहां कर्मचारी भविष्य निधि संगठन को अधिकार होगा कि यह किसी अन्य योग्य लेखा-परीक्षक द्वारा खातों की लेखा-परीक्षा कराए तथा इस प्रकार हुए खर्च नियोक्ता द्वारा वहन किए जाएंगे।

(ख) लेखा-परीक्षकों द्वारा वित्तीय वर्ष अर्थात् 1 अप्रैल से 31 मार्च तक की समाप्ति के बाद छह महीने के भीतर लेखा-परीक्षीत तुलन-पत्र सहित लेखा-परीक्षक की रिपोर्ट की प्रति सीधे इस कार्यालय में प्रस्तुत की जाए। तुलन-पत्र का प्रारूप और इस रिपोर्ट में प्रस्तुत की जाने वाली जानकारी कर्मचारी भविष्य निधि संगठन द्वारा निर्धारित की जाएगी तथा संबंधित क्षेत्रीय भविष्य निधि आयुक्त के कार्यालय में इलैक्ट्रॉनिक प्रारूप के साथ हस्ताक्षरित प्रतिलिपि में उपलब्ध कराई जाएगी।

(ग) एक ही लेखा-परीक्षकों को लगातार दो वर्ष के लिए तथा अगले वित्तीय वर्ष के पहले दिन से मिली छूट से अधिक के लिए नियुक्त न किया जाए।

25. लगातार तीन वित्तीय वर्षों तक कोई हानि या पूंजी आधार में कटौती को अगले वित्तीय वर्ष के पहले दिन से मिली छूट प्राप्त होगी।

26. नियोक्ता प्रत्येक माह की समाप्ति से 15 दिन के भीतर निरीक्षण हेतु ऐसी सुविधाओं का प्रावधान करेगा तथा ऐसे निरीक्षण प्रभारों का भुगतान करेगा जो केन्द्रीय सरकार द्वारा अधिनियम की धारा 17 के उप-खण्ड (3) के खण्ड (क) के अंतर्गत समय-समय पर दिए निर्देशों के अनुसार हों।

27. न्यासी बोर्ड या नियोक्ता द्वारा छूट देने के लिए शर्तों के किसी उल्लंघन की स्थिति में दी गई छूट संबंधित व्यक्ति को इस संबंध में कारण बताओं नोटिस जारी करने के बाद रद्द कर दी जाएगी।

28. किसी भी धोखे, गबन, गलत निवेश निर्णयों आदि के फलस्वरूप ट्रस्ट को हुई किसी भी नुकसान की स्थिति में नियोक्ता नुकसान पूरा करने का भागी होगा।

29. किसी विलय, अविलय, अभिग्रहण, बिक्री, एकीकरण, सहायक कंपनी का गठन चाहे पूर्णतः स्वामित्व वाली हो या नहीं इत्यादि के फलस्वरूप यदि प्रतिष्ठान की कानूनी स्थिति में कोई भी बदलाव होता है तो दी गई छूट निरस्त होगी एवं प्रतिष्ठान को तुरंत नई छूट देने के लिए मामले की रिपोर्ट करनी चाहिए।

30. एक ही भविष्य निधि ट्रस्ट में एक से अधिक इकाई/प्रतिष्ठानों के भाग लेने की स्थिति में भाग लेने वाली इकाईयों के किसी भी ट्रस्टी/नियोक्ता द्वारा कोई भी चूक होने पर सभी ट्रस्टी संयुक्त रूप से एवं अलग से जिम्मेदार/उत्तरदायी होंगे और आरपीएफसी आम भविष्य निधि ट्रस्ट के सभी न्यासियों के विरुद्ध उपयुक्त कानूनी कार्रवाई करेगा।

31. छूट प्राप्त न्यास निधि के अधिग्रहण के मामले में, अंतरीय ब्याज के कारण हानि के अनुमानित निवल वर्तमान मूल्य की वसूली प्रतिष्ठान से की जानी चाहिए।

32. केन्द्र सरकार प्रतिष्ठान की छूट की निरंतरता के लिए शर्तों को बढ़ा सकती है और जब भी इनको संप्रेषित किया जाएगा ये प्रतिष्ठान इन अतिरिक्त शर्तों का अनुपालन करने के लिए बाध्य होंगे।

New Delhi, the 14th May, 2015

S.O. 1033.—Whereas M/s Bharatiya Reserve Bank Note Mudran Pvt. Ltd. [under Code No. KN/19774 in Karnataka Region] (hereinafter referred to as the establishment) has applied for exemption under clause (a) of sub-section (1) of section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the Act).

2. And whereas in the opinion of the Central Government, the rules of the provident fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme) in relation to the employees in any other establishment of similar character.

3. Now, therefore, in exercise of the powers conferred by clause (a) of sub-section (1) of section 17 of the said Act and subject to the conditions annexed with this notification, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from 01.03.1997 until further notification.

[No. S-35015/4/2001-SS-II]
SUBHASH KUMAR, Under Secy.

ANNEXURE

CONDITIONS FOR GRANT OF EXEMPTION FROM THE PROVISIONS OF EMPLOYEES' PROVIDENT FUND SCHEME, 1952

1. The employer shall establish a Board of Trustees under his Chairmanship for the management of the Provident Fund according to such directions as may be given by the Central Government or the Central Provident Commissioner, as the case may be, from time to time. The provident fund shall vest in the Board of Trustees who will be responsible for and accountable to the Employees' Provident Funds Organisation, *inter alia*, for proper accounts of the receipts into and payment from the Provident Fund and the balance in their custody. For this purpose, the "employer" shall mean:—

- (i) In relation to an establishment, which is a factory, the owner or occupier of the factory; and
- (ii) In relation to any other establishment, the person who, or the authority, that has the ultimate control over the affairs of the establishment.

2. The Board of Trustees shall meet at least once in every three months and shall function in accordance with the guidelines that may be issued from time to time by the Central Government/Central Provident Commissioner (CPFC) or an officer authorized by him.

3. All employees' as defined in section 2(f) of the act, who have been eligible to become members of the Provident Fund had the establishment not been granted exemption, shall be enrolled as members.

4. Where an employee who is already a member of Employees' Provident fund or a Provident Fund of any other exempted establishment is employed in his establishment, the employer shall immediately enroll him as a member of the fund. The employer should also arrange to have the accumulations in the Provident Fund account of such employee with his previous employer transferred and credited into his account.

5. The employer shall transfer to the Board of Trustees the contributions payable to the Provident Fund by himself and employees at the rate prescribed under the act from time to time by the 15th of each month following the month for which the contributions are payable. The employer shall be liable to pay simple interest in terms of the provisions of Section 7Q of the Act for any delay in payment of any dues toward the Board of Trustees.

6. The employer shall bear all the expenses of the administration of Provident Fund and also make good any other loss that may be caused to the Provident Fund due to theft, burglary, defalcation, misappropriation or any other reason.

7. Any deficiency in the interest declared by the Board of Trustees is to be made good by the employer to bring it up to the statutory limit.

8. The employer shall display on the notice board of the establishment, a copy of the rules of the funds as approved by the appropriate authority and as and when amended thereto along with a translation in the language of the majority of the employees.

9. The rate of contributions payable, the conditions and quantum of advances and other matters laid down under the provident fund rules of the establishment and the interest credited to the account of each member, calculated on the monthly running balance of the member and declared by the Board of Trustees shall not be lower than those declared by the Central Government under the various provisions prescribed in the Act and Scheme framed thereunder.

10. Any amendment to the Scheme, which is more beneficial to the employees than the existing rules of the establishment, shall be made applicable to them automatically pending formal amendment of the Rules of the Trust.

11. No amendment in the rules shall be made by the employer without the prior approval of the Regional Provident Fund Commissioner. The Regional Provident Fund Commissioner shall before giving his approval give a reasonable opportunity to the employees to explain their point of view.

12. All claims for withdrawals, advances and transfers should be settled expeditiously, within the maximum time frame prescribed by the Employees' Provident Fund Organisation.

13. The Board of Trustees shall maintain detailed accounts to show the contributions credited withdrawal and interest in respect of each employee. The maintenance of such records should preferably be done electronically. The establishments should periodically transmit the details of members' accounts electronically as and when directed by the Central Provident Commissioner/Regional Provident Commissioner.

14. The Board of Trustees shall issue an annual statement of accounts or pass books to every employee within six months of the close of financial/accounting year free of cost once in the year. Additional printouts can be made available as and when the members want, subject to nominal charges. In case of passbook, the same shall remain in custody of employee to be updated periodically by the Trustees when presented to them.

15. The employer shall make necessary provisions to enable all the members to be able to see their account balance from the computer terminals as and when required by him.

16. The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation.

17. The Board of Trustees shall invest the monies of the provident fund as per the directions of the Government from time-to-time. Failure to make investments as per directions of the Government shall make the Board of Trustees separately and jointly liable to surcharge as may be imposed by the Central Provident Fund Commissioner or his representative.

18. (a) The securities shall be obtained in the name of Trust. The securities so obtained should be in dematerialized (DEMAT) form and in case the required facility is not available in the areas where the trust operates the Board of Trustees shall inform the Regional Provident Fund Commissioner concerned about the same.

(b) The Board of Trustees shall maintain a script wise register and ensure timely realization of interest.

(c) The DEMAT Account should be opened through depository participants approved by Reserve Bank of India and Central Government in accordance with the instructions issued by the Central Government in this regard.

(d) The cost of maintaining DEMAT account should be treated as incidental cost of investment by the Trust. Also all types of cost of investments like brokerage for purchase of securities etc. shall be treated as incidental cost of investment by the Trust.

19. All such investments made like purchase of securities and bonds, should be lodged in the safe custody of depository participants approved by Reserve Bank of India and Central Government, who shall be the custodian of the same. On closure of establishment or liquidation or cancellation of exemption from EPF Scheme, 1952 such custodian shall transfer the investment obtained in the name of the Trust and standing in its credit to the Regional PF Commissioner concerned directly on receipt of request from the Regional PF Commissioner concerned to that effect.

20. The establishment shall intimate to the Regional P.F. Commissioner concerned the details of depository participants (approved by RBI and Central Government), with whom and in whose safe custody, the investments made in the name of trust, *viz.*, investments made in securities, bonds, etc. have been lodged. However, the Board of Trustees may raise such sum of sums of money as may be required for meeting obligatory expenses such as settlement of claims, grant of advances as per rules and transfer of member's PF accumulations in the event of his/her leaving service of the employer and any other receipts by sale of the securities or other investments standing in the name of the Fund subject to the prior approval of the Regional PF Commissioner.

21. Any commission, incentive, bonus or other pecuniary rewards given by any financial or other institutions for the investments made by the Trust should be credited to its account.

22. The employer and the members of the Board of Trustees, shall furnish a written undertaking agreeing to abide by the conditions and this shall be legally binding on the employer and the Board of Trustees, including their successors and assignees.

23. The employer and the Board of Trustees shall also give an undertaking to transfer the funds promptly within the time limit prescribed by the concerned RPFC in the event of cancellation of relaxation. This be legally binding on them and will make them liable for prosecution in the event of any delay in the transfer of funds.

24. (a) The account of the Provident Fund maintained by the Board of Trustees shall be subject to audit by a qualified independent chartered accountant annually.

Where considered necessary the EPFO shall have the right to have the accounts re-audited by any other qualified auditor and the expenses so incurred shall be borne by the employer.

(b) A copy of the Auditor's report alongwith the audited balance sheet should be submitted to this office by the Auditors directly within six months after the closing of the financial year from 1st April to 31st March. The format of the balance sheet and the information to be furnished in the report shall be prescribed by the Employees' Provident fund Organisation and made available with the RPFC office in electronic format as well as a signed hard copy.

(c) The same auditors should not be appointed for two consecutive years and not more than the relaxation withdrawn from the first day of the next succeeding financial year.

25. Any loss for the three consecutive financial years or erosion in the capital base shall have the relaxation withdrawn from the first day of the next succeeding financial year.

26. The employer shall provide for such facilities for inspection and pay such inspection charges as the Central Government may from time-to-time direct under clause (a) of sub-section (3) of Section 17 of the Act within 15 days from the close of every month.

27. In the event of any violation of the conditions for grant of relaxation, by the employer or the Board of

Trustees, the relaxation granted shall be cancelled after issuing a show cause notice in this regard to the concerned persons.

28. In the event of any loss to the trust as a result of any fraud, defalcation, wrong investment decisions etc. the employer shall be liable to make good the loss.

29. In case of any change of legal status of the establishment as a result of merger, de-merger, acquisition, sale, amalgamation, formation of a subsidiary, whether wholly owned or not etc., the relaxation granted shall stand revoked and the establishment should promptly report the matter for grant of fresh relaxation.

30. In case there are more than one unit/establishment participating in the common Provident Fund Trust, all the trustees shall be jointly and separately liable/responsible for any default committed by any of the trustees/employer of any of the participating units and the RPFC shall take suitable legal action against all the trustees of the common Provident Fund Trust.

31. In case of takeover of the exempted Trust Fund, estimated net present value of the loss due to differential interest should be recovered from the establishment.

32. The Central Government may lay down further conditions for continuation of exemption of the establishment and the establishment shall be bound to comply with these additional conditions as and when the same are communicated.